



HM Courts
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Service



**Property Chamber
Eastern Residential Property
First-tier Tribunal**

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Your ref: MA.L646/1
Our ref: CAM/34UE/LSC/2013/0130

Date: 07 April 2014

Dear Sirs

RE: Landlord & Tenant Act 1985 - Section 27A(1)

**PREMISES: Flat 4 Regent Gate & Flat 6 Kings Walk, Crown Street, Kettering,
Northamptonshire, NN16 8JF**

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy is being sent to all other parties to the proceedings.

Any application from a party for permission to appeal to the Upper Tribunal (Lands Chamber) must normally be made to the Tribunal within **28 days** of the date of this letter. If the Tribunal refuses permission to appeal you have the right to seek permission from the Upper Tribunal (Lands Chamber) itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours faithfully


Mrs Viv Roberts
Case Officer

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative;
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application;
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

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

Case Reference : CAM/34UE/LSC/2013/0130

Property : Flat 4 Regent Gate & Flat 6 Kings Walk,
Crown Street, Kettering, Northamptonshire
NN16 8JF

Applicant (Tenants) : Patrick Leyden & Joan Leyden
Flat 6, Kings Walk
Zacky Pasha & Rebecca Helen Claire
Pasha
Flat 4 Regent Gate

Representative : Martin Addrison of Gisby Harrison
Solicitors
Mr Nunn, Counsel

Respondent (Landlord): Powell & Co Property (Brighton) Limited
Representative : Mr S Powell, Director

Date of Application : 21st October 2013

Date of Hearing : 27th January 2014

Type of Application : A determination of the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985)

Application under section 20C of the
Landlord and Tenant Act 1985 for the
limitation of service charge arising from
the landlord's costs of proceedings

DECISION

Decision

1. The Tribunal made the following findings:
 - The Tribunal found that the section 20 Procedure had not been carried out correctly. If an application had been made under section 20ZA of the Landlord and Tenant Act 1985, due to the difference in extent and cost of the works proposed and the extent and cost determined to be reasonable, the Tribunal was not satisfied that it was reasonable to dispense with any of the consultation requirements.
 - The Tribunal found that the lower ground floor or gymnasium is retained by the Landlord.
2. The Tribunal determined that the works as set out in the table at paragraph 108 are chargeable to the Service Charge under the Lease and determined a reasonable estimated cost of such work to be £123,268.00.
3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge

Reasons

Application

1. On the 21st October 2013 the Applicants made an application for the determination of the reasonableness and payability of Service Charges to be incurred for the financial years ending 29th March 2014 and 2015 in respect of works referred to in the Notice of Intention issued under section 20 of the Landlord and Tenant Act 1985 (as amended) A copy of the Notice and Statement of Estimates was attached to the Application Form.
2. The Tribunal is asked to decide:
 - Whether the section 20 Procedure had been carried out correctly
 - Whether it is appropriate that by doing the works the Landlord shall remove from the building access to the gymnasium
 - Whether the Landlord has power to carry out the proposed works and charge them to the service charge under the Lease
 - Whether the proposed works are necessary
 - Whether the estimated cost of the works is fair and reasonable in all the circumstances

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. 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, improvement 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 of 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 period*

5. 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 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.*

6. Section 27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any*

specified description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

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

- (a) has been agreed or admitted by the tenant,*
- (b) has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party*
- (c) has been the subject of a determination by a court*

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

7. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal, now subsumed into the First-tier Tribunal (Property Chamber). Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250. The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

8. The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants and an opportunity must be given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Description and Inspection of the Subject Property

9. The Tribunal inspected the Building of the development in which the Properties are situated in the presence of the Mr Nunn Counsel for the Applicant, Mr Pendred, the Applicants' Expert, Mr Powell, The Respondent's Representative, Mr Gobel and Mr Moore witnesses for the Respondent and Mr Eisler, the Caretaker and witness for the Respondent. Also in attendance were two Applicants, Mrs Leyden and Ms Pasha.
10. The Building is situated between Regent Street, Crown Street, and Kings Street, Kettering. The Building was originally a bakery and food warehouse, which has been converted into 24 flats. The old bakery, which is now Kings Walk, is a three-storey brick structure with pitched slate roof, which abuts the old food warehouse. The old food warehouse, which is now Regent Gate, is a two-storey brick structure with a pitched slate roof. Within each structure there are 12 flats. Both structures have Crittal style metal windows and form a single Building. At the Kings Walk end of the Building there is a yard with a covered area, which affords parking for a number of vehicles. Vehicular and pedestrian access to the yard is from Kings Street. The Regent Gate end of the Building has an undercroft which was originally a loading bay and which provided both vehicular and pedestrian access from Regent Street. The loading bay provides limited parking. The yard and the loading bay are not connected for vehicles although they are for pedestrians. In the yard there is a bin area where there are 2 Euro bins. Both the yard and loading bay are gated. The gates are wired to operate electronically but the automation no longer works.
11. At the Kings Walk end of the Building there were 4 flats on the ground floor under a covered area with upvc lanterns set in the roof. There is a metal staircase to the roof of the covered area, which acts as a walkway. From this walkway are two wooden staircases each of which is covered by an upvc and glass structure giving access to the first and second floors. For each staircase there is a short flight of stairs to two first floor flats with a further dogleg stairs to two flats on the second floor. A separate metal staircase leads to the loading bay of the two-storey food store, which has been converted into 6 flats on the ground floor and six on the first floor. The ground floor flats are around what was the loading bay. Above the bay at first floor level is a wide walkway which gives access to the six second floor flats of the Building. In the roof over the wide walkway is a glass lantern giving light to the first floor walkway and down to the ground floor loading bay.
12. Between the Kings Walk and Regent Gate there is a mezzanine area from which access to the basement under the Building can be obtained. This at one time housed a gym. The area is currently locked as it gives access to the

services for the Building and until the area is re-developed and the services enclosed, this part is secured for safety reasons. It was noted that each flat is metered for its own services and that there is a separate meter for the common parts.

13. Externally parts facing the King's Walk courtyard and car park are shabby and betray the poor standard of the conversion.. Externally, the two upvc and glass staircases and the walkway above the yard with its lanterns were at the time of inspection in fair condition. The doorways around the yard on the ground floor are unattractively flush with the wall rather than recessed. Internally the staircases are dirty. The area opposite where the bins are now stored had been a bin store which had been burnt down and the evidence of the fire on the wall remained. Around the yard is a rendered and painted wall.
14. The Tribunal noted the common areas of the yard, with its walkway and two upvc staircases, the loading bay, with its wide walkway above and the mezzanine access to the basement as being aesthetically disappointing, utilitarian and neglected. The paving blocks in part of the yard had become uneven and those around the inspection chambers had sunk. There were several possible reasons e.g. settlement with the weight of cars or following the laying of the drains.
15. The Tribunal noted that there were two main pitched roofs and one flat roof. There were mostly upvc round line gutters but there were also lengths of box guttering. The down pipes were upvc, one of which could be seen to require attention. The condition of the roofs and box gutter could not be seen from any level to which the Tribunal had access. The flat roof is over the Regent Gate first floor walkway ground floor parking area (originally the loading bay) and has a lantern giving light below.
16. The Building Crown Street elevation brickwork has been re-pointed. The windows were powder coated Crittal style. They could be inspected at ground level on the Crown Street elevation and there was found to be some corrosion on the hinges of the windows and the seal around the windows was missing on some and required renewing on others. The sills had been removed from some windows and needed replacing. The removal of the sills has left pockets in the brickwork which would have received the sill that had been removed. Some of these pockets had been filled by bricking up, others with a form of filler but several were open and had fabric or similar matter 'stuffed' into them possibly from inside the flat. Also on Crown Street there is a doorway which has been boarded up which is need of replacement.
17. The Tribunal saw the lighting in the undercroft and around the King's Walk courtyard as well as that in the parking area of Regent Gate together with the meter housing in this area. It also saw the gas flues protruding from the walls of the Building.
18. Internally the area around the loading bay on the ground floor and around the walkway above at first floor level is unattractive and poorly converted. The flat doors are not in keeping with the Building. Internally the area between Kings Walk and Regent Gate was dirty and shabby. The Tribunal inspected the

basement and found it to be large area with limited light from the window. It appeared to be damp possibly due to having been shut up and without heat.

Background to Ownership

19. The Respondent's Representative provided some background to the past and present development of the site and ownership. The Old Bakery (now Kings Walk) and food warehouse (now Regent Gate) had been purchased and converted by Templewood Estates Limited a developer who had subsequently got into financial difficulties and has been put into liquidation. The Creditors had put the Building into the hands of Receivers, JH Gershinson and LJ Brooks of Allsop LLP Residential Management (ARIM). The Receivers had sold the freehold of the Building to the Respondent at auction on the 16th April 2012 and it is held under Title Number NN49889 at the Land Registry.

The Leases

20. A copy of the Lease for Flat 4 Regent Gate dated 11th August 2011 was provided which was between Templewood Estates Limited (In Liquidation) acting by its Receivers (1) and Zacky Pasha and Rebecca Helen Claire Pasha [two of the Applicants] (2). The Lease is for a term of 125 years from the 1st January 2008.
21. The Leases were in similar form and although not all the terms were identical the relevant provisions identified were as follows:
22. Clause 3 (9) of the Leases states that the Tenant covenants:
 - (a) *Not in any circumstances whatsoever to assign or underlet or part with or share possession or grant any licence of part of the Demised Premises.*
 - (b) *Not during the last seven days of the term to assign underlet or part with the possession of the whole of the Demised Premises without first obtaining the consent in writing of the Landlord which consent shall not be unreasonably withheld or delayed.*
 - (c) *Upon every assignment charge transfer underlease or other Instrument affecting or evidencing any transmission or devolution of the Demised Premises or of any estate or interest therein:*
 - (i) *to give notice in duplicate to the Landlord's solicitors for registration within one month from the date thereof and to pay a reasonable registration fee of at least £50 plus VAT for each such registration; and*
 - (ii) *to procure upon every assignment or transfer or underlease for a term in excess of three years such party enters into a direct covenant with the Landlord to observe and comply with the covenants herein contained such Deed of Covenant to be in the form required by the solicitors to the Landlord provided always that the Landlord will not be required to receipt the notice to confirm or accept the same nor the Deed of Covenant if there are any arrears of ground rent or Service Charge or there is any material breach of covenants.*

23. Clause 3 (17) and Schedule 3 of the Leases sets out the Tenant's covenant to pay the Service Charge and the wording of the clause is virtually the same in both Leases. The Tenant covenants to pay to the Landlord the Tenant's share of the "Total Expenditure" as stated in Schedule 3. The Clause and Schedule provide that an "Interim Charge" shall be made on the 25th March and 29th September in each year on account of the "Service Charge" attributable to the flat, which is a "fair and appropriate proportion of the "Total Expenditure". The "Total Expenditure" means all reasonable and proper costs and expenses whatsoever incurred by the Landlord acting reasonably in any accounting period in carrying out its obligations under Clause 4."
24. Clause 3 also contains the covenants relating to the maintenance of the Demised Premises including the right of the Landlord to enter and view the condition of the Demised Premises and of any defects and to give the Tenant notice thereof
25. Clause 4 of the Lease sets out the obligations of the Landlord. The Clause includes covenants:
- To repair, maintain renew uphold and keep in good and substantial repair and condition:
 - The structure of the Building
 - The Common Parts
 - The boundary walls and fences
 - To paint as appropriate
 - To insure
 - To keep clean and where appropriate lighted the common parts and to keep clean the windows in the common parts
 - To employ a caretaker, at the Landlord's discretion
 - To employ managing agents, at the Landlord's discretion
 - To maintain any communal television
26. Clause (h) states
To maintain repair renew replace add any communal television aerial and/or satellite dish and/or cable and any coin operated telephone boxes and any fire extinguishers and any electronic door opening system and any television monitor screen camera or ancillary equipment and to pay all expenses in connection therewith and the rental or hire thereof and in particular and without prejudice to the generality of the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Landlord may be considered necessary or advisable for the proper maintenance benefit safety and administration of The Building or for the benefit or safety of any Tenant including the provision of any further or additional facilities for the benefit of The Building
27. Clause 4(m) states:
Without prejudice to the generality of the foregoing to do or cause to be done all such installations repairs improvements additions acts matters or things as in the discretion of the Landlord (including the modernisation or replacement of plant and machinery) as may be deemed reasonable for the

maintenance safety and administration of The Building to a good class residential standard

28. Part 1 of Schedule 1 describes the Demised Premises as follows:

- (B) *In relation to the flat there shall be included in this demise*
 - (i) *All internal non-structural walls*
 - (ii) *One half severed vertically of internal dividing walls which mutually serve to enclose the demised premises and other parts of the building which shall be deemed to be party walls*
 - (iii) *All window frames and glass therein*
 - (iv) *The main entrance door and its frame exclusively serving the Demised Premises*
 - (v) *The ceilings up to the underside of the joists slabs or beams to which the same shall be affixed and the floors down to the upper side of the joists slabs or beams supporting the same and the plaster face of all external or structural walls*
 - (vi) *All cisterns tanks drains wires ducts conduits and any other service installation whatsoever used solely for the purpose of the Demised Premises*
 - (vii) *The floor surface of any patio or balcony or roof terrace within the Demised Premises*
- (C) *There shall be excepted from this demise:*
 - (i) *The roof or roofs and the roof space of The Building and the air space above the roof or roofs of The Building*
 - (ii) *The main structural walls and the structural parts of The Building including the concrete slabs joists or beams dividing The Building horizontally and including the railings to the patio or balcony or roof terrace (if any)*
 - (iii) *The foundations of the Building including the soil below*

Attendance at the Hearing

29. The Hearing was attended by Mr Nunn, Counsel representing the Applicants (the Applicants' Representative) and Mr Martin Pendred (Applicant's Expert Witness) Mrs Leyden (an Applicant), Mr Sean Powell (Director of the Respondent and the Respondent's Representative) Mr Patrick Goubel, Mr Maurice Moore, Mr Richard Eisle (Respondent's Witnesses)

Evidence

Applicant's Case

30. The Applicants provided a written statement of case. They did not consider the consultation procedure under section 20 Landlord and Tenant Act 1985 had been carried out correctly because they said they were not given sufficient information regarding the estimates until 5 days before the end of the consultation period following the *Notice of the Landlord's Proposals*.

31. On having seen the detailed breakdown of the work and costing from the selected contractor the Applicants applied to the Tribunal asking:
- Whether the Landlord has power to carry out the works and charge them to the service charge under the Lease
 - Whether it is appropriate that by doing the works the Landlord shall remove from the building access to the gymnasium
 - Whether the estimated cost of the works is fair and reasonable in all the circumstances
32. With regard to the first question the Applicants submitted the Landlord is not entitled to carry out works to the windows, doors or gas flues to the flats as these items are demised to the Tenants. In addition works to remove and replace the staircases, walkways and balustrades should not be undertaken until their status with regard to Building Regulations is confirmed by Kettering Borough Council Building Control.
33. With regard to the second question the Applicants submitted the Applicant stated the area referred to as the gymnasium is closed off from the Tenants and it is submitted that this is a common part and the gymnasium should be re-instated. The Applicants understand that the Respondent intends to make it into another apartment. It was said this was unreasonable if the cost of doing so is to be met by the Tenants.
34. With regard to the works to be carried out the Applicants stated that they were aware that the Building has not been finished off and works are required "to restore it to a good standard of development". The Applicants submit that these works are not as extensive as the Respondent claims. The Applicant said they believe the Respondent has tried to create a large project out of the minor tidying up. The Applicants understand some of the works in the schedule to be "ridiculously expensive".
35. The Applicants state that the Respondent has engaged a surveyor and an architect at a cost of £6,000 each and it is submitted that these contracts should have been subject to a section 20 consultation procedure as they are part of the same works. The Applicants are also concerned that the Respondent intends to project manage the work with an associate company and that the costs are likely to be much more than if a local company had been employed. They refer to travelling time as an excessive cost.

Applicant's Expert's Report

36. In a written Report the Applicant's Expert identified three documents: the Regalhelm Quotation which follows the Schedule of Works or Specification drawn up by SD Passey Associates, the Surveyor's Report by Budworth Hardcastle and his own report. These three documents are incorporated into a Spread Sheet which the Applicants' Expert drafted. The purpose of the Spread Sheet is to set out the Schedule of Works/Specification, the Surveyors Comments (if any) regarding those works, the Applicant's Comments with regard to those works and the cost of carrying out the works as assessed by Regalhelm and the Applicant's Expert. The Applicants' Expert stated that the

Schedule of Works/Specification "does not generally follow the surveyor's report".

37. The Applicant's Expert firstly addressed the issue whether the Landlord has power to carry out the works and charge them to the service charge under the Lease. In particular he referred to Clause 4(m) and to the description of the Demise in Paragraph (B) of Part 1 of the First Schedule of the Lease and identified sub paragraphs:
- (iii) *All window frames and glass therein*
 - (iv) *The main entrance door and its frame exclusively serving the demised premises*
 - (vi) *All cisterns tanks drains wires ducts conduits and any other service installation whatsoever used solely for the purpose of the Demised Premises*
38. The Applicants' Expert stated in his Report, confirmed at the Hearing, that the Respondent, as Landlord, was bound by the Lease. He stated that under Clause 4(m) the Landlord was not entitled to "replace existing parts of The Building which are perfectly serviceable and adequate for the proper use of The Building, bearing in mind that such works are to be carried out at the expense" of the tenants.
39. He then referred to a number of specific items in the Schedule of Works/Specification and Regalhelm's costing of those works as follows.

The Lower ground floor

40. He submitted that the work to the lower ground floor amounted to £39,000 and appeared to have no benefit to the Tenants. It was understood that it was intended to convert what was known as the gym area into living accommodation. If this were sold as an extra flat it would only benefit the Landlord at the expense of the Tenants who would have paid for at least some of the conversion work under this Schedule of Works/Specification.

External Doors

41. He submitted that the existing external doors to the flats on the ground and first floor are hardwood and quite adequate and satisfactory for their purpose and their replacement at a cost of £30,000 is not required. Both the Applicant's Counsel and the Applicants' Expert at the hearing stated that these were a part of the Demise and therefore could not be a part of the Landlord's works.

Windows

42. It was noted that £70,000 had been allocated to carrying out work on the windows in Regalhelm's costing. The Applicant's Expert stated in his Report confirmed by both the Applicant's Counsel and the Applicants' Expert at the hearing that the windows were part of the Demise and therefore could not be a part of the Landlord's works. It was agreed that works were needed around the windows relating to external sills, missing brickwork, and sealing around

the frames to prevent damage to the external walls. However any checking, refurbishment or decoration of the windows was a matter for the individual Tenants.

43. It was further said that the windows were powder coated as stated by Budworth Hardcastle in their Report at paragraph 4.4.1; therefore they do not require decoration in the normal way. It was agreed that there is some corrosion showing through in places which will need to be dealt with on a localised basis and a modest sum is required for this work and that otherwise they are in good order.

Timber Staircase (Item 2.03 in the Schedule of Works/Specification)

44. The removal and replacement of an existing timber staircase with a steel staircase at a cost of £6,379 including decoration was considered to be unnecessary. Budworth Hardcastle in their Report said that it is combustible but it was said that it only serves 2 ground floor flats and is protected from the elements by the Upper deck. An allowance was made for steel plating as a precautionary measure.

External Door (2.22 Schedule of Works/Specification)

45. A sum of £5,840.00 has been allowed for the replacement and decoration of an external door to Crown Street which is currently boarded up. This was submitted to be a serious overcharging when the replacement of a similar door at 3.08 of the Schedule of Works/Specification is costed at £2,767 which is still considered excessive.

Staircase Enclosures (3.11 Schedule of Works/Specification)

46. It was noted that £108,076 is estimated for the replacement of the staircase enclosures. The Applicants' Expert pointed out that the Surveyor's Report by Budworth Hardcastle only stated that the design of the stairways was undertaken with no recognition of the need for detailing to accommodate the thermal movement and that the steelwork has not been detailed or decorated to prevent build-up of moisture and ensuing corrosion. He stated that in his opinion this did not justify the entire replacement of these staircase enclosures and that remedial works only are required.

The Deck Lanterns (3.14 Schedule of Works/Specification)

47. It was noted that £25,600 had been allowed for the removal of the lanterns and their replacement with glass floor panels. The principle of glass panels was accepted but the Applicants' Expert stated that several small panels will only lead to modest costs and give the required effect rather than glazing over the whole of the existing lantern openings. It was said that there is good natural light to the undercroft area as the deck is only 7 m wide and open down the whole of one side.

The Roof Lantern ((4.10 Schedule of Works/Specification)

48. It was noted that an estimate was provided of £9,312 for removal of the existing glazed roof lantern at Regent's Gate and its replacement with a powder coated glazed lantern. The surveyors have made no comment about this lantern or any indication that it has failed. This was submitted to be an unnecessary expense.

The Steel Balustrade (3.15 Schedule of Works/Specification)

49. It was noted that a sum of £72,000 is allowed for a glass and steel replacement of the steel balustrade. It was pointed out that the Surveyor's Report comments that "the design of the metal balustrade to the deck requires clarification".
50. At the time of the Applicants' Expert Report there was no Engineer's Report. A structural survey (Copy provided) was made by Michael G Stark I Eng, AMI Struct E dated January 2014 in which it was stated that although the infill bars were compliant it did not appear to comply with loading requirements of BS 6399 1:1996. He submitted costing for strengthening measures being taken including an allowance for necessary builder's work in respect of cutting into and making good to the deck finishes. Three options were given details of which were attached to the Report. Option A was at a cost of £3,500 plus VAT and Options B and C were at a £2,850.00 plus VAT.
51. The Applicants' Expert endorsed these to the extent that they were significantly less than the proposed £72,000 for a glass and steel replacement.

Preliminary Costs

52. The Applicants' Expert set out the Preliminary Costing by Regalhelm together with his own costing and comments which are set out in the table below:

Item	Regalhelm Costing	Applicants' Expert Costing
	£	£
Supervision and Management	49,570	5,000
Applicants' Comment: The company is based in Ealing and these costs are likely to be high. A local firm should have been employed.		
Attendance/Site Cleaning	17,880	2,000
Applicants' Comment: This may be for housing out of area workers which would not be necessary if a local firm was employed. Only site cleaning would be required at the end of the job.		
Site Office etc	5,780	5,780
Applicants' Comment: Agreed		
Site telephone and PC	1,540	0
Applicants' Comment: Contractors have their own mobile phones and laptops		
Health & Safety etc	5,390	2,500

Applicants' Comment: Based upon the reduced cost of the contract in the Applicants' opinion this amount should be reduced accordingly		
Site Hoarding	3,380	2,000
Applicants' Comment: Agreed necessary but cost given was considered excessive		
Protection	12,310	0
Applicants' Comment: This is unclear without clarification no allowance should be made.		
Access Scaffolding & Alarm	56,120	25,000
Applicants' Comment: it is submitted that much of the work can be done from mechanical hoists as the only scaffolding will be to the access deck at first floor level.		
Temporary Electrics	2,340	1,000
Applicants' Comment: The Landlord has an existing supply		
Temporary Water Supply	480	480
Applicants' Comment: Agreed		
Transport	2,810	0
Applicants' Comment: A local firm should be employed		
Rubbish Removal	1,700	0
Applicants' Comment: This has been allowed for in the Quotation based on the Schedule of Works/Specification		
Interim and Final Cleaning	4,320	0
Applicants' Comment: Cleaning has already been allowed for		
Insurances	4,310	2,000
Applicants' Comment: Given that in the opinion of the Applicant the work has been reduced the insurance premium should be less		
Total	167,930	22,480

53. The Applicant's Expert stated in conclusion that the works did not take account of the Tenant's situation and included a significant amount of work which replaced adequate structures and therefore are unnecessary. It was submitted that the costs were excessive and the contractor comes from London and will need transport and housing for workers. In addition the builder's preliminaries amounted to 29% of the works costs and 22% of the total cost and is largely due to the £50,000 for supervision and management.
54. He went on to state that:
It was accepted that there was some need to bring the property up to a satisfactory standard but this needs to reflect the type of building, its location and the nature of the leaseholders and their ability to pay. This is a conversion of a former cooperative bakery in a high density mixed use area where the housing is predominantly late Victorian terraced of mixed quality. Kettering is historically a low priced area of modest property. It is not

appropriate to create a high end up-market style of development at the expense of the leaseholders.

55. The Applicant's Expert provided in his Report a detailed analysis of his method of calculating the works for which he provided an alternative cost.

Respondent's Case

56. The Respondent's Representative provided a written Statement of Case giving the background to the intended works. He stated that a section 20 consultation procedure had been carried out as follows:
57. A Notice of Intention was served on 22nd February 2013 by recorded delivery. The Notice included the full survey report from Budworth Hardcastle including architects drawings (Copies of all documents were provided). No written observations were received.
58. The Respondent's Representative said that a specification of the work was drawn up by the surveyors for contractors to quote from. He said the specification was sent to local contractors but they failed to quote probably due to the scope of the work. The contractors that quoted are in the South East. A copy of the specification was sent to the Tenants.
59. A Statement of Estimates was sent to the Leaseholders on the 20th September 2013. Due to the high cost the Tenants contacted the Respondent and a meeting was held in Kettering on Monday 7th October 2013. The Respondent's Representative said that the purpose of the meeting was to try to explain the seriousness of the issues and the desperate need for the work. Several Tenants including a bank in possession are suing their solicitors/surveyors for negligence. All Tenants were advised to do this with a view to their claims covering the cost of the proposed works. The invoice for the major work was sent out on 21st October 2013. Copies of the demands were provided.
60. The Respondent's Representative said that the plans for the proposed works are supported by the police, local authority and the Member of Parliament. It was added that the flats currently cannot be mortgaged because they do not comply with Building Regulations and have not been 'signed off'.
61. The Respondent's Representative stated the the lower ground floor, known as the gym, is not referred to in the Lease and is retained by the Landlord and the Tenants have no rights over it.
62. The Respondent's Representative said at the Hearing that it was intended to create a caretaker's flat in the space and if that had not been done it would have been sold and the proceeds paid into the Service Charge fund. He said that only one flat was owner occupied, all the others being sub-let, and that at the moment the sole owner-occupier acted as a caretaker for the Building. Due to the problems with the high proportion of subtenants, anti-social behaviour in the area, the lack of security due to the gates not being in working order and the lack of a satisfactory fire protection system (emergency lighting etc) the

insurance company had been unwilling to cover the Building unless a caretaker was employed.

63. The Respondent's Representative made a further statement of case in response to the Applicant's Statement of Case. In it he made the following points:
- Kettering Borough Council had not been able to supply any certificates of completion of the original development works.
 - Clause 4 (h) and (m) of the Lease gives the landlord the authority to carry out the proposed works.
 - The gym had never existed and is not mentioned in the Lease.
 - The costs are not unreasonable for such a large building and project.
 - The Tenants should have made observations when the Notice of Intention was served under the section 20 consultation procedure.
 - The estimates were available for inspection at the Respondent's offices
 - The Landlord can refurbish the windows and doors where this affects the safety and maintenance of the building.
 - The charge for Budworth Hardcastle and Landivar Architects are reasonable and are £250 per flat each and therefore not subject to a section 20 consultation procedure.
 - The work is so substantial it cannot be done in stages
64. Mr Patrick Goubel a director of the respondent gave evidence in writing and orally at the Hearing. He referred to the condition of the property with particular reference to the electrical wiring, communal lighting and lack of fire protection. He said that to deal with these matters he had liaised with Kettering Borough Council Building Control. He said that he has a site meeting with member of the Council, a Mr S Wells, who was the only officer who was at the Department when the work was carried out. It has been stated that four of the flats did not have final certificates issued and there was an issue as to the issuing of the certificates on the other flats. There were no certificates in relation to gas, electrical or fire safety on file. They are currently investigating the matter and have promised Mr Goubel a full report. In particular Mr Goubel has asked them to inspect all the flats, identify any issues and on their remediation, issue certificates where there were none and re-issue new ones to the other flats.
65. In addition at the meeting that was held in Kettering on Monday 7th October 2013 to discuss the proposed works, some of the tenants were under the impression that there was a guarantee supported by an insurance policy with a company called premiere Guarantee. Mr Goubel said that there had been a policy but because the building was not 'signed off' the policy was never put in to effect. Since then he has tried to obtain re-payment of the £31,000 premium.
66. At the meeting on Monday 7th October 2013 to discuss the proposed works, he said that the Respondent had not brought a full breakdown of costing for the work and this was seen by some Tenants as an attempt to hide the figures. In fact it was an oversight and three days later he sent all the Tenants a full breakdown.

67. A witness Statement was submitted from Landivar Architects which stated that they were instructed by the Respondent to:
- Establish if there are any planning infringements
 - Prepare a cohesive design for the property
 - Establish whether the property complied with current building regulations
 - Establish a full specification and schedule of works
 - Collate and oversee the reports and surveys
68. They said the Architect instructed Budworth Hardcastle who prepared a report. The Architects said that the report was not exhaustive and concurrently with the survey they conducted an assessment of the building in relation to current Building Regulations specifically fire prevention and escape.
69. They said that Kettering Borough Council confirmed at a meeting held on 6th November 2012 that there is inadequate fire detection within the common parts, there is no emergency lighting and the stairs themselves do not have any fire protection.
70. A schedule of Works was drawn up and seven contractors were approached five of them based in the Kettering locality. They expressed the view that the nature and scope of works described in the tender package are essential and form a minimum standard to bring the property back in line with current requirements
71. A copy of the Building Survey prepared by Mr John Burditt BSc, MRICS, RMaPS, NDEA of Budworth Hardcastle was submitted. This was detailed but specific points were noted by the Tribunal as follows:
- Structure – It was recommended that the integrity of the steel structure should be investigated by a structural engineer as active corrosion was detected in one section that had been uncovered
 - Roofs – There were a number of recommendations with regard to the roofs particularly the flat roof, which appear to have been addressed in the Schedule of Works
 - Rainwater Disposal - A number of defects were identified which appear to have been addressed in the Schedule of Works
 - Main External Walls – signs of raising damp were noted. These do not appear to be included in the Schedule of Works. Splitting of the sills and signs of corrosion in the reinforced concrete lintels were noted.
 - Windows and External Doors – the matters raised have been addressed in the Schedule of Works
 - Stairways and Decks/Walkways – the matters raised have been addressed in the Schedule of Works
 - Lighting – this is referred to in the Schedule of Works
 - Gas flues – these are referred to in the Schedule of Works
 - Fire alarm Installation this is not referred to in the Schedule of Works
72. A witness statement was submitted from Mr RJT Eisler who is the owner of Flat 2 Kings Walk and is the only owner occupier in the building. He said that

he had been living there since 2007. Mr Eisler gave a lengthy endorsement of the proposed works but his initial concern is to have the building made safe, for security to be installed and for it to be put in good condition and to meet with Building Regulations. He then wants it to be made aesthetically pleasant. Mr Eisler addressed the Tribunal at the Hearing on these matters laying particular stress on the need for a thorough overhaul of the electrics as an electrician friend had expressed concern about them. Mr Eisler's statement is not set out in detail as it did not address the technical issues which the Tribunal has to consider.

73. A witness statement was submitted from Mr BA Conn who is the owner of Flat 8 Regent Gate who said he had employed a surveyor and a builder to look at the work and they both gave him the impression that the cost of remedial works were likely to be in the order of what the Respondent was proposing.
74. The Respondent's Representative said the Respondent was trying to make a very poor development into a good development and provide what those Tenants who bought 'off plan' thought they were purchasing. He said that the costings by the Applicant's Expert would result in a very inferior job and were wholly unrealistic. The only way to eradicate the anti-social behaviour was to improve the Building which he said he was entitled to do under Clause 4 (h) and (m).

Examination of the Schedule of Works/Specification

75. At the Hearing the Tribunal went through the Spread Sheet provided by the Applicant's Expert Witness item by item and the following table is a summary of the spread sheet with comments on particular items referred to at the Hearing.

Respondent's Contractor's (Regalhelm) Reference	Works	Respondent's Contractor's (Regalhelm) Costing £	Applicant's Expert Witness Costing £
Lower Ground Floor			
1.01	Install new window opening	5,834.00	0
	New window fitting	5,766.00	0
	New window boards	481.00	
	Make good	1,558.00	
1.02	Remove old floor coverings	621.00	0
	Fit new floor coverings	1,574.00	
1.03	New door inc	2,568.00	0
	Decoration	563.00	
	Fittings	90.00	
1.04	Remove old staircase	249.00	200.00
	Fit new staircase	6,330.00	
	Decorate	1,433.00	

Comments: Budworth Hardcastle Survey makes no comments about the above works The Applicants' Expert states that the staircase only needs repair. (Allowance made). The Respondent stated that there is a fire risk and the area is in poor condition			
1.05	Remove window Re-new window Window boards Decoration	157.00 2,883.00 240.00 779.00	0
1.06	Clean Re-render & decorate stairwell	1,624.00 2,204.00	1,000
1.07	Repair existing windows Adjustment of windows	900.00 450.00 1,080.00	0
Comments: Budworth Hardcastle Survey makes general comments on the windows at 4.4.5 of its report (a) various fittings are corroding; (b) extensive advice on dealing with condition of windows. The Applicants' Expert stated that the windows were within the demise and not the responsibility of the Landlord (Part 1 Schedule 1 Paragraph B (iii)). Stair well only needs decoration and the staircase only needs repair. (Allowance made). The Respondent stated that the staircase was not in accordance with Building Regulations			
1.08	Provide new lighting to stairwell Related building Work	994.00 90.00	0
Budworth Hardcastle Survey was concerned whether there was an emergency lighting circuit. The Applicants' Expert stated that more information was needed about what the work entailed and why it was necessary to install new lighting. The Respondent stated that the work was needed to bring the lighting up to standard.			
1.09	Check gas flues	600.00	500.00
Comments: Budworth Hardcastle Survey was of the opinion that the flues did not meet Building regulation standards and were the installation workmanship was poor. The Applicants' Expert stated that the flues were within the demise and not the responsibility of the Landlord but where damage was done to common parts some repair might be needed. (Allowance made). The Respondent stated that the flues were dangerous and believed there was a responsibility to put them in a fit state.			
Ground Floor			
2.02	Repair existing front doors Replace existing front doors Decoration Fittings	1,001.00 28,259.00 6,204.00 990.00	0
Comments: Budworth Hardcastle Survey makes no comment. The Applicants' Expert stated that the doors were within the demise and not the responsibility of the Landlord (Part 1 Schedule 1 Paragraph B (iv)). The Respondent stated that they were not of external standard and did not comply with Building Regulations.			

2.03	Remove existing timber staircase Install steel staircase Decoration	199.00 5,037.00 1,152.00	0
Comments: Budworth Hardcastle Survey makes no comment. The Applicants' Expert stated staircase sound and adequate. The Respondent stated that the staircase was not in accordance with Building Regulations			
2.04	Prepare Redecorate render	5,932.00 13,264.00	4,000.00 5,000.00
Comments: All agreed render requires repair. The only dispute was as to cost.			
2.05	Check and report on windows Allow for adjusting Allow for refurbish £100 each	2,700.00 2,241.00 3,240.00	2,000.00
Comments: Budworth Hardcastle Survey makes general comments on the windows at 4.4.5 of its report various fittings are corroding. Refers to poor fitting around the window frames with open pockets in the brickwork where sections of sills have been removed. The Applicants' Expert stated that the windows were within the demise and not the responsibility of the Landlord (Part 1 Schedule 1 Paragraph B (iii)). Accepted some repair work needed around the windows where it affected the structure of the Building (Allowance made). The Respondent referred to the Survey and requested the Tribunal recall the condition of the windows and the missing sills, bricks and sealant around the windows seen at the inspection.			
2.07	Rectify sub base of block paving Re-lay block paving Replace paviors as necessary	5,534.00 1,200.00 1,800.00	1,800.00
2.09	Remove existing timber decking Install steel deck Decoration	1,665.00 11,000.00 4,888.00	1,975.00
Comments: Budworth Hardcastle Survey recommended that the integrity of the design of the deck be evaluated by a structural engineer. It is constructed of combustible material and confirmation was needed as to its compliance with Building Regulations by Kettering Borough Council's Building Control. (3.2.4; 3.2.5) The Applicants' Expert agreed compliance with Building Regulations by Kettering Borough Council's Building Control but expressed the opinion that as the deck was 30mm thick oak it should be fireproof and that over cladding with steel plate as a precautionary measure should be sufficient. (Allowance made). The Respondent addressed the issue with reference to ongoing discussions as to whether the Building complies with Building Regulations with Kettering Borough Council's Building Control and this is recorded in the narrative below.			
2.10	Prepare window frames Decoration	1,809.00 19,710.00	2,000.00
Comments: Budworth Hardcastle Survey commented that steel hinge sections are corroded in various places and refers to poor fitting around the window frames with open pockets in the brickwork where sections of sills have been removed. It also states that the windows			

are powder coated.(5.2.3; 4.6.2)

The Applicants' Expert refers to the powder coating stating that the windows do not require decoration although some touching up where corrosion has occurred may be necessary. (Allowance made).

The Respondent referred to the Survey and requested the Tribunal recall the condition of the windows and the missing sills, bricks and sealant around the windows seen at the inspection.

2.11	Prepare & decorate balustrades	4,822.00	
	Prepare & decorate steelwork	2,983.00	
2.12	Remove waste from courtyard	994.00	300.00
2.13	Repair vehicle gates	4,500.00	4,500.00
	Decoration	3,422.00	900.00
2.16	Fit bicycle racks	2,256.00	575.00

Comments:

The Applicants' Expert stated that the proposed cost was excessive and provided an alternative figure. (Allowance made).

The Respondent stated that to install a sufficiently sturdy and relatively vandal proof rack the amount submitted was reasonable.

2.18	Repair rainwater pipe	240.00	240.00
2.06	Provide new undercroft lighting	9,677.00	0
2.14	Install CCTV	2,700.00	
	Related building work	750.00	

Comment:

Budworth Hardcastle Survey commented that the common area off Regent Street is lit with surface mounted bulkhead florescent light fittings. It was not clear whether there was any emergency lighting included in the installation.

The Applicants' Expert deals with lighting and CCTV as a separate item (At the end of this table)

2.13	Repair electrics to gates	398.00	398.00
2.20	Check gas flues	1,367.00	1,000.00
	Allow for alteration of flues to meet Building and Gas Safe Regs	600.00	
	Replace gas meter boxes	911.00	
		2,187.00	

Comments:

Budworth Hardcastle Survey was of the opinion that the flues did not meet Building regulation standards and the installation workmanship was poor.

The Applicants' Expert stated that the work was duplicated but agreed that there were damaged gas meter boxes which required replacement (Allowance made). Otherwise flues were within the demise and not the responsibility of the Landlord.

The Respondent stated that the flues were dangerous and believed there was a responsibility to put them in a fit state.

2.21	Check & repair soffits	1,200.00	2,000.00
	Decoration of soffits	5,915.00	
2.22	Replace Crown St Door	4,789.00	360.00
	Decoration	961.00	
	Fittings	90.00	
First Floor			
3.01	Check existing front doors	368.00	0
	Replace existing front doors	10,276.00	

	Decoration	2,256.00	
	Fittings	360.00	
Comments: Budworth Hardcastle Survey makes no comment. The Applicants' Expert stated that the doors were within the demise and not the responsibility of the Landlord (Part 1 Schedule 1 Paragraph B (iv)). The Respondent stated that they were not of external standard and did not comply with Building Regulations.			
3.02	Repair & prepare render	300.00	0
	Decoration	3,157.00	
The Applicants' Expert stated that the parts which appear to be referred to had been recently decorated.			
3.03	Check and report on windows	3,762.00	1,750.00
	Allow for adjusting	3,154.00	
	Allow for refurbish £100 each	4,560.00	
3.05	Prepare window frames	2,546.00	0
	Decoration	27,702.00	
The comments for both these items are the same as previously stated in respect of the windows.			
3.06	Decoration of balustrades	671.00	671.00
3.08	Remove door	199.00	360.00
	Install new door inc fittings	2,568.00	
3.09	Provide nonslip treads on stairs	779.00	779.00
Comments: Budworth Hardcastle Survey comments that the open stairway for the first floor common area serving the Regent Street flats has no additional fittings to increase grip during inclement weather. The Applicants' Expert agreed			
3.10	Check gas flues	1,748.00	500.00
	Allow for alteration of flues to meet Building and Gas Safe Regs	600.00	
	Provide Gas Safe Certificates	1,152.00	
	Replace gas meter boxes	2,767.00	
Comments: Budworth Hardcastle Survey was of the opinion that the flues did not meet Building regulation standards and the installation workmanship was poor. The Applicants' Expert stated that the flues were within the demise and not the responsibility of the Landlord so Gas Safe certificates were not the Landlord's responsibility. As stated previously some minor repair around flues is needed. (Allowance made). Previous allowance for damaged gas meters boxes should cover all damaged boxes. The Respondent stated that the flues were dangerous and believed there was a responsibility to put them in a fit state. The Applicants' Expert is unrealistic in his costing for the replacement of the damaged boxes.			
3.11	Remove existing glazed surround from staircases	4,076.00	5,000
	Provide new Crittal style enclosure in accordance with Architects drawings	104,000	
Comments:			

Budworth Hardcastle Survey states that the two steel framed stairways from the first floor deck give access to the second and third floors. Corrosion was noted to the steelwork frame where decorations have failed and the junction between the steel and upvc has not been designed to accommodate thermal movement and gaps are visible. (4.6).			
The Applicants' Expert stated that there is no significant failure. Overhaul by treating corrosion, sealing gaps and decoration. The glazing is safety glass. Some upgrading of windows may be necessary to comply with fire regulations but removal and replacement of the staircase surrounds is not necessary. (Allowance made for repair work)			
The Respondent stated that the present surrounds did not meet with Building Regulations and required removal and replacing with a structure that did.			
3.12	Remove vinyl finishes and nosings and prepare Provide vinyl sheet flooring to stairs Provide aluminium gradus nosings no slip inserts	1,342.00 9,014.00 10,108.00	3,000
Comments: Budworth Hardcastle Survey stated that the actual stairways are formed from factory produced staircases boarded with plywood. There does not appear to be any additional fire protection encasing these them. (4.6.1) The Applicants' Expert agreed that work is needed and accept the proposal to provide and fit aluminium nosings with vinyl inserts but disagreed with the cost. (Alternative cost provided) The Respondent stated that the Applicants' costing was not realistic.			
3.13	Remove existing slabs Prepare existing deck Lay new tiles Allowance for roof levelling	4,076.00 1,500.00 32,469.00 1,200.00	11,023.00
3.14	Remove glazed lantern Install new walk on glass panels	1,624.00 24,000.00	
Comments: Budworth Hardcastle Survey stated that the collars around the soil and vent pipes and rainwater pipes have been poorly fitted above the roof membrane leading to water penetration and fungal growth. There is no pedestrian guarding to the lanterns. (5.2.2) The Applicants' Expert agreed that the decking has failed and there is damp extensively in the void underneath. It is accepted that the decking needs to be removed and re-laid. He also agreed that there was no guarding around the lanterns and that the glass floor panels are a sensible alternative but disagreed with the cost. He submitted that the new panels do not have to be the same size as the existing lanterns and need only to be relatively modest as they will provide significantly better light to the ground floor than the existing obscure lanterns. There is already good natural light under the deck. (Alternative cost provided) The Respondent stated that the Applicants' costing was not realistic and was proposing a significantly inferior product.			
3.15	Remove existing balustrade Install new glass and steel balustrade	2,502.00 70,000.00	2,900.00
Budworth Hardcastle Survey stated that the design of the balustrade to the deck required clarification in particular the requirement to be able to meet lateral loads as			

defined in BS6399-1:1996. (5.2.3)

The Applicants' Expert stated that it has not been shown that the existing balustrade is unsafe e.g. that it does not meet building or health and safety regulations. In any event it would be quite feasible to strengthen the existing balustrade if defects are shown. The cost of a glass balustrade is excessive. (Alternative costing has been given for strengthening and decoration if necessary.)

The Respondent referred to a structural survey (Copy provided) by Michael G Stark I Eng, AMI Struct E dated January 2014 in which it was stated that although the infill bars were complaint it did not appear to comply with loading requirements of BS 6399 1:1996. In addition the balustrade is not of a sufficient height to meet with Building Regulations. Whereas it might be strengthened it cannot be increased in height. Therefore the balustrade requires renewal.

3.16	Provide: Large planters Medium planters Planting medium Plants	795.00 1,092.00 450.00 600.00	0
3.17 & 3.18	Investigation of flat roof Repair to flat roof	600.00 1,200.00	0
Budworth Harcastle Survey 4.1.5 – 4.1.17			
3.04	Provide new lighting	3,728.00	
	Install CCTV	1,500.00	
	Related building work	400.00	
The Applicants' Expert deals with lighting and CCTV as a separate item but commented that the cost previously quoted should be enough to cover all necessary CCTV.			
Second Floor			
4.01	Prepare window frames Decoration	1,072.00 10,864.00	0
4.03	Check and report on windows Allow for adjusting Alloe for add. works	1,600.00 1,328.00 1,920.00	0
The same comments were made about the windows as stated above.			
4.06	Check existing chimney stack and provide steel frame and strapping to secure	650.00	650.00
4.07	Check box gutters Allowance for box gutter repair	265.00 600.00	865.00
4.08	Check box gutters Allowance for box gutter repair	265.00 600.00	Duplication 0
4.10	Remove existing glazed lantern Install new glazed lantern	812.00 8,500.00	0
3.04	Provide new lighting Install CCTV Related building work	1,972.00 150.00	
	Upgrade lighting to common external parts		5,000.00
	Install CCTV		4,000.00
The Applicants' Expert gives a global figure for upgrade of electrics and for CCTV.			

Total costs		583,454.00	65,246.00
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Section 20C

76. The Applicants made an application to limit the service charge arising from the landlord's costs of the proceedings under section 20C Landlord and Tenant Act 1985. It was stated that they had been forced to bring the case because they had not had adequate time in which to examine the detailed estimates. It was stated that the proposed works are not permitted under the Lease and many of those that are permitted are unreasonable. Therefore the Landlord should not be permitted to put the costs of the proceedings through the service charge.
77. The Respondent's Representative said that he had engaged a respected Architect and Surveyor to prepare the Schedule of Works on which a range of contractors were asked to quote both local and further afield. None of the local contractors responded. Two contractors submitted and Regalhelm was the lowest quotation. When the section 20 consultation procedure was undertaken no-one responded until they received the estimates. He was incredulous that they had not anticipated how much it would cost to put the Building right. He said that there is no reason why these estimates are wrong. The figures put forward for the work by the Applicants are ridiculous and will lead to a poor finish. He expected Tenants to be pleased and supportive about the work that was going to be done.

Decision

78. The Tribunal considered all the evidence and submission by the parties and identified the following issues to be addressed:
- Whether the section 20 Procedure had been carried out correctly
 - Whether it is appropriate that by doing the works the Landlord shall remove from the building access to the gymnasium
 - Whether the Landlord has power to carry out the proposed works and charge them to the service charge under the Lease
 - Whether the proposed works are necessary
 - Whether the estimated cost of the works is fair and reasonable in all the circumstances

Section 20 Procedure

79. The Section 20 Procedure Notice of Intention served on 22nd February 2013 stated:
- We enclose with this Notice a surveyor's report with photographs and architects plans. The surveyor's report sets out numerous defects many of

which mean that the Building does not comply with current legislation and will form the basis of the scope of the work to be carried out.

- Additionally the work will include changes shown in the architects drawings which is necessary as some areas of the building do not comply with planning control/building regulations and need fundamental change
- Work will include a fire safety system that complies with current legislation and a security system including electric gates, intercom and cameras.
- It will be necessary to include further surveys and related fees
- There will be supervision costs related to the work for the architects surveyors and out managing agents
- Due to the extent of the work a contingency fund will be included in the contractors' quotations
- There will be additional costs payable to Kettering Borough Council of Planning Application and their related costs.

80. The Tribunal considered that this was compliant with the provision of the legislation. Although the Notice states that a description of the works to be carried out may be inspected at 153 Praed Street, London, in fact the Budwoth Hardcastle survey and architects drawings were included with the Notice. The architect's drawings were not considered to be very helpful as to the nature of the works but the survey identified particular defects to be remedied.

81. The Statement of Estimates served on the 20th September 2013 stated that all the estimates are attached and can be inspected by appointment during normal hours of business at 153, Praed Street, London W2 1RL, the Respondent's offices. The estimates attached were:

ESCS £947,875.06 including VAT

Regalhelm £907,661 including VAT

The Notice stated that written observations were to be made by 20th October 2013. There was a response to these estimates although it is not known whether the responses were in writing and a meeting was held on the 3rd October 2014 following which Mr Goubel said that he sent out a full breakdown of the cost although there is some disagreement as to precisely when these were received. He thought they should have arrived on or about the 6th October 2013 although the Applicants submit on or about the 12th October 2013

82. The Tribunal found that the consultation procedure under section 20 Landlord and Tenants Act 1985 had not been carried out correctly. Following the decision of the Lands Tribunal on 8th August 2008 of *M&M Savant Limited v Brown and others* London was an unreasonable distance to travel from Kettering to inspect the breakdown of costs and these were not made available until at least the 6th October 2013 when the period of observations ended on 20th October 2013. The Tribunal was of the opinion that the Applicants had suffered prejudice. No application had been made under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements. Had such an application due to the difference in extent and cost of the works proposed and the extent and cost determined to

be reasonable the Tribunal was not satisfied that it was reasonable to dispense with any of the consultation requirements.

83. The Tribunal also found that the Architect's Fee of £6,000 and the Surveyor's Fee of £6,000 were linked not only to each other but also to the proposed works and therefore should have been the subject of a section 20 consultation.

The Gymnasium or Lower Ground Floor

84. The Tribunal found that the Gymnasium or Lower Ground Floor was not mentioned in the Lease and was retained by the Respondent as Landlord and was not a Common Part under the Lease. The Landlord might convert the area into another flat which may or may not be occupied by a caretaker. With regard to such occupation the Tribunal merely observes that there is provision for a caretaker to be employed under the Lease.

Reasonableness of the Proposed Works

85. Whether the Landlord has power to carry out the proposed works and charge them to the Service Charge under the Lease and whether the proposed works are necessary are all factors that are related to the consideration of whether the estimated cost of the works is reasonable in all the circumstances. Therefore these three questions are addressed under the heading of "reasonableness".
86. The Tribunal considered the schedule of works as follows. In determining the standard of repair required the Tribunal took in to account the provisions of the Lease and the age, character and locality of the Property [as per Lord Esher in *Proudfoot v Hart* (1890) 25 QBD 42].

Lower Ground Floor

87. As it was found that the Gymnasium or Lower ground Floor was not a Common Part under the Lease, therefore its refurbishment could not be included in the Service Charge. The staircase and stairwell giving access to the Lower Ground Floor was solely for this purpose and was only for the benefit of the landlord. It is therefore the responsibility of the Landlord to secure it and maintain it. Therefore the £36,837.00 allocated to the refurbishment of this area was determined not to be reasonable. The gas flues are dealt with separately.

Doors and Windows on Lower Ground, Ground, First and Second Floors

88. The Tribunal found that the external doors and the windows to each flat were within the Demised Premises as defined by Part 1 of Schedule 1 of the Lease.
89. The Tribunal considered the provision of Clause 4 (h) and (m) of the Lease as to whether, notwithstanding the windows and doors being within the Demise, the Landlord could carry out the proposed works and charge the cost to the Service Charge. The Tribunal was of the opinion that generally it could not. It took the view that Clause 4 related to the Common Parts of the Building.

However, where the maintenance and safety of the Building is compromised then Clause 4(m) may cover that situation. To interfere with the integrity of the Demise other than in accordance with the Lease would be in breach of the covenant to quiet enjoyment.

90. The Tribunal found that the condition of the front doors did not compromise the maintenance and security of the Building and therefore their replacement was not permitted under the Lease. Therefore the sums allocated to this work were not reasonable.
91. However, from Budworth Hardcastles' survey and from the Tribunal's own inspection it was noted that sills and bricks were missing and there was cracking of the lintels. The windows also either had not been sealed or the sealing between the wall and the window had failed. In addition some touching up would be beneficial to halt corrosion on specific spots but it agreed that, due to the coating, complete painting was not appropriate. Therefore the Tribunal found that this work could be carried out under Clause 4 of the Lease. The Applicant's Expert had made various allowances floor by floor, except the second floor, totalling £6,450. The Tribunal could not see a justification for not including the top floor and determined that an allowance of £2,000 a floor, totalling £8,000 was a reasonable estimate for the making good to the sills, lintels, and seals with some touching up of exposed areas on the windows themselves.

Gas Flues

92. The Tribunal found that Clause 3 (4) of the Lease required the Tenants to maintain the demise. The Landlord had a right of entry under Clause 3 (7) and (8) on giving notice except in an emergency to deal with such matters as defective gas flues. In addition for the maintenance and safety of the Building Clause 4 (m) of the Lease permitted the Landlord to carry out such works. However, the Tribunal was of the opinion that this was on a flat by flat basis as was needed to remedy specific defects. It was not to be undertaken as part of a general refurbishment of the Building under the Service Charge. Individual Tenants should be put on notice if the flue was a safety risk and if not remedied within a reasonable time action might be taken under the terms of the Lease. Mr Goubel stated that the gas and electrical installations had not been signed off by the Building Control. In relation to any checking the Tribunal was of the opinion that such work would need to be done in conjunction with Building Control to ensure that the appropriate certification was provided.
93. It was accepted that for the upper floors an opportune time to identify such works would be when scaffolding is in place to assist making good to the external wall. The Applicant's Expert gave an estimate of £2,000 for making good.

Wooden Stair Case on Ground Floor

94. The Respondent stated that the wooden staircase, Schedule of Works Item 2.03, should be replaced at a cost of £6,379.00. The Budworth Hardcastle

Survey makes no comment and the Applicants' Expert stated the staircase appeared sound and adequate. In the absence of evidence to indicate that the staircase is contrary to Building Regulations (e.g. a statement by the Applicant's Surveyor) the Tribunal determined its replacement cost of £6,379.00 unreasonable.

Decking and Balustrades

95. The Respondent states that the decking and balustrades are not compliant with Building Regulations however no evidence is provided for this statement. Budworth Hardcastles' Survey states that the regulatory status of these items needs to be checked with Building Control. Mr Goubel is currently in discussion with Kettering Borough Council who says that they will investigate and provide a report. The Tribunal was of the opinion that it was not reasonable to carry out work on these items until the report has been provided; in particular the replacement of the Ground Floor decking and balustrade at Regent's Gate or the replacement of the balustrade on the first floor at King's Walk. The strengthening as advised by the structural engineer is reasonable.
96. The Tribunal determined to be reasonable the cost of replacing the decking at the first floor level of King's Walk as assessed by the Applicant's Expert.

Repair of Render

97. The charge for repair of render appears reasonable.

Redecoration

98. The charge for redecoration appears high in almost all circumstances e.g. the render, the soffits, the two doors and the balustrades. The Tribunal determined that the costing, where given, of the Applicant's Expert to be reasonable. Where no figure is provided the Tribunal has accepted the contractor's estimate.

Replacement of Crown Street and First Floor Communal Door

99. The Tribunal considered the contractor's cost for both doors high but the Applicant's Expert to be low particularly for the first floor communal door. On balance the Tribunal determined that the charge of £2,568 for each door to be a reasonable average cost with an allowance of £191 for removal of the existing doors.

Stair Case Surround

100. The Tribunal noted the problems identified by the Budworth Hardcastle's Survey in relation to the PVCu and glass stair case surround. It also noted that the contractor's remedy is to replace the two existing structures at a cost of over £100,000 whereas the Applicant's Expert submits that a remedial work could be affected at a cost of £5,000. No evidence such as a structural engineer's report was adduced by the Respondent to counter the Expert's

opinion that remedial work on the existing structure would be satisfactory. In the absence of such evidence the Tribunal determined that the remedial work referred to by the Applicant's Expert at a cost of £5,000 is reasonable.

Flooring and Stair Treads

101. In the absence of more detailed evidence to the contrary the Tribunal determined that the Applicant's Expert's costing of £3,000 for the flooring and stair treads within the surrounds was reasonable.

Replacement Lanterns with Glass Panels

102. The Tribunal noted that the lanterns needed to be guarded by a balustrade, replaced by glass panels or the area decked over. The Respondent submitted costing for glass panels to cover the whole area. The Applicant's Expert submitted a costing for smaller panels merely to give light although he pointed out that there was sufficient natural light under the deck as it was open on two sides.

Gutters, Chimney & Roof

103. The cost of repairs of the gutters, chimney and roof were determined to be reasonable.

Planters

104. The installation of planters was not considered to be reasonable because there is no specific clause in the Lease to provide and maintain them and there has been no request so far as the Tribunal is aware for such item to be provided as part of the services.

Electricity

105. The cost of installing emergency lighting and PIR lighting was considered high at £16,369 although the Applicant's Expert's calculation of £5,000 was considered on the low side in the absence of evidence to the contrary the Tribunal determined it to be reasonable as an estimated cost. The cost for making good of £1,390 estimated by the contractor was determined to be reasonable.

CCTV

106. Contractors' estimated cost determined to be reasonable.

General Expenses and Contingency

107. As will be noted from the Table below, the Tribunal has determined a lower overall cost of the work than that estimated by the Respondent's contractor but higher than those calculated by the Applicant's Expert. Nevertheless as the Tribunal's costs were closer to those of the Applicant's Expert the Tribunal determined those to be the most reasonable estimate. The contingency of

£5,000 as allowed for by the Respondent's contractor was determined to be reasonable.

108. The Table below sets out the Tribunal's determination in respect of the cost in detail and its reasoning in outline, the detail being in the paragraphs above.

Respondent's Contractor's (Regalhelm) Reference & Description	Con-tractor's Costing £	App-licant's Expert Witness Costing £	Tribunal's Determin-ation £	Tribunal's Reason
Lower Ground Floor				
1.01 – 1.08	31,126	200	0	Landlord's retained property
1.06 Render	3,828	1,000	1,000	Agree Expert Witness Costing
1.07 Windows	2,430	0	0	Part of Demise but agree Expert Witnesses allowance for sills, touching up etc
1.08 Electrical	994 90	0	0	Expert's opinion at end
1.09 Gas Flues	600	500	500	Part of Demise but agree Expert Witnesses allowance for remedial work
Ground Floor				
2.02 Front Doors	36,454	0	0	Part of Demise
2.03 Staircase	6,388	0	0	Appears sound no evidence contrary to Building Regs.
2.04 Render	5,932 13,264	4,000 5,000	5,932 5,000	Render requires repair but agree Expert's decoration cost
2.05 Windows	8,181	2,000	2,700	Part of Demise but agree an allowance for sills etc
2.07, 2.08, 2.15 Block Paving	8,534	1,800	8,534	Agree contractor's estimate
2.09 Decking & Balustrades	17,553	1,975	1,975	No evidence contrary to Building Regs. agree Expert Witnesses allowance
2.10 Windows	21,519	2,000	2,000	Part of Demise but agree Expert Witnesses allowance for sills, touching up etc
2.11 Balustrades	7,805	0	7,805	Appears to be decoration of 2.09. Disallowed there allowed here
2.12 Rubbish	994	300	300	Only for removal existing rubbish

2.13 Gates	4,500 3,422	4,500 900	4,500 900	Repair work agreed Agree Expert decoration cost
2.16 Bicycle rack	2,256	575	575	Agree Experts cost
2.18 RW pipe	240	240	240	Agreed
2.06, 2.13, 2.14 Electrical	398 9,677 750	398	398	Agree gate controls Expert's opinion & Decision at end
CCTV	2,700			Expert's opinion & Decision at end
2.20 Gas Flues	5,065	1,000	1,000	Agreed Expert's estimate
2.21 Soffit Decoration	7,115	2,000	2,000	Agree Expert decoration cost
2.22 Crown St Door	5,840	360	199 2,568	Removal and replacement as for 3.06
First Floor				
3.01 Front Doors	13,260	0	0	Part of Demise
3.02 Render	3,457	0	3,457	Agree contractor's cost
3.03, 3.05 Windows	41,724	1,750	1,750	Part of Demise but agree Expert Witnesses allowance for sills, touching up etc
3.06 Balustrade	671	671	671	Agreed
3.08 Door	199 2,568	360	199 2,568	Removal and replacement as for 2.22
3.09 Stair treads	779	779	779	Agreed
3.10 Gas Flues & Meter Boxes	6,267	500	500	Agree Expert's cost for new meter boxes
3.11 Staircase Surround	108,076	5,000	5,000	Removal & replacement unreasonable – no consideration of repair Agree Expert's allowance for repair
3.12 Flooring & Stair treads	20,464	3,000	3,000	Agree Expert's costing
3.13 Decking	39,245	See 3.14	See 3.14	Agreed
3.14 Lanterns	25,624	11,023	11,023	Agree Expert's costing
3.15 Balustrade	72,502	2,900	2,900	No evidence contrary to Building Regs. agree Structural Surveyor's estimate for options B or C
3.16 Planters	2,937	0	0	Unreasonable aesthetic item

3.17, 3.18 Flat roof	1,800	0	1,800	Agree contractor's estimate
3.04, 3.07 Electrical	3,728 400			Expert's opinion & Decision at end
CCTV	1,500			Expert's opinion & Decision at end
Second Floor				
4.01, 4.02, 4.03 Windows	16,784	0	1,550	Part of Demise & sufficient allowance for sills, touching up etc already made
4.06 Chimney	650	650	650	Agreed
4.08, 4.09 Gutters	865 865	865	865	Agreed except duplicated
4.10 Lantern	9,312	0	0	Unreasonable to replace lantern
3.04, 3.07 Electrical	1,972 150			Expert's opinion at end
Electrical	(16,369)	5,000	5,000	Contractor likely to be too high, Expert may be too low
CCTV	(4,200)	4,000	4,200	Agree contractor's estimate
Making good after electrical work	(1,390)	0	1,390	Agree contractor's estimate
Sub Total	583,454	65,246	95,428	
General	167,930	22,480	22,840	
Contingency	5,000		5,000	
Total	756,384	87,726	123,268	

Determination

109. The Tribunal made the following findings:

- The Tribunal found that the section 20 Procedure had not been carried out correctly. If an applicator had been made under section 20ZA of the Landlord and Tenant Act 1985 due to the difference in extent and cost of the works proposed and the extent and cost determined to be reasonable the Tribunal was not satisfied that it was reasonable to dispense with any of the consultation requirements.
- The Tribunal found that the lower ground floor or gymnasium is retained by the Landlord.

110. The Tribunal determined that the works as set out in the table at paragraph 108 are chargeable to the Service Charge under the Lease and determined a reasonable estimated cost of such work to be £123,268.00.

111. Taking into account the determination and the lack of time in which the Applicants had in which to examine the detailed estimates under the section 20 consultation procedure the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge.

Judge JR Morris

4th April 2014