



HM Courts
& Tribunals
Service

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

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Your ref: CDA/089099
Our ref: CHI/24UN/LSC/2017/0011

Date: 16 July 2018

Dear Sirs

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

PREMISES: Kingsway Gardens, Andover, Hampshire, SP10 4BJ

Enclosed with this letter is the Tribunal's Amended Decision dated 13 July 2018

The original Decision is dated 8 May 2018. The Tribunal received a letter from Talbot Walker dated 21 May 2018 raising four points of query, two of which asserted arithmetical errors made by the Tribunal in its calculation of the service charges as a result of its findings. Talbot Walker asked that these errors be corrected and put forward its own proposed calculations. The Tribunal's initial view was that its arithmetic had indeed been wrong and that an appeal based on the wrong arithmetic was likely to be successful. It therefore decided to treat the request for a correction as a request for permission to appeal, pursuant to Rule 56, so that the Tribunal's powers would include the power to review, and Capsticks and Talbot Walker were informed accordingly. Talbot Walker was given the opportunity to raise any further matters (none were raised) and Capsticks was given the opportunity to respond, which it did in a letter dated 21 June 2018, including proposed re-calculations. The other participating lessees, all from Atholl, were not informed because none of the points raised by Talbot Walker had any effect on the Tribunal's findings in relation to the service charge payable by Atholl lessees.

Having fully considered the parties' submissions and conducted a review under Rule 55, the Tribunal accepts that arithmetical errors were made in its calculation of the number of wing walls for all the main blocks. A further error was made in the calculation of the management charge per lessee in Tudor Court. These mistakes resulted in wrong totals for the service charges payable by the lessees in each of the main blocks. However these errors were accidental in nature and they have no effect whatsoever on the Tribunal's reasoning. As they can be corrected by simply substituting the right figures into the decision at paragraphs 168, 173, and 179, the Tribunal has concluded it is necessary only to issue an Amended Decision, pursuant to section 9(4) of the Tribunals, Courts and Enforcement Act 2007 and Rule 50. A formatting error in paragraph 122 has also been corrected. There is no need to grant permission to appeal.

While it is unnecessary for the Tribunal to comment further regarding the calculations in respect of the wing walls, it may assist the parties to know that the

Tribunal concluded that Talbot Walker's proposed re-calculation methodology was fallible in that it failed to take account of the work that the Tribunal found would be required to the wing walls at upper ground level. It was further concluded that Capsticks' proposed re-calculations, while adopting a different methodology for costing the work (and not one previously put in evidence), result in figures very similar to those arrived at by the Tribunal. It is once again emphasised that on account demands are based on a *reasonable estimate*.

With respect to the two additional points raised by Talbot Walker, it is only necessary to point out that (i) the lessees in the main blocks did not raise any challenge to the work to the brick dividing walls, and thus the costs demanded on account have been allowed and (ii) the Tribunal took into account the likely costs savings by omitting the increase in height of the upstand when making its calculations in respect of the balcony asphalt. Neither point requires any amendment to the Decision; nor do they raise an issue giving rise to a possible point of appeal.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'T' shape with a horizontal crossbar and a vertical stem that curves slightly to the right at the top.

Miss Tracy Williams
Case Officer



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

Case Reference : **CHI/24UN/LSC/2017/0011**

Property : **Kingsway Gardens, Andover
Hampshire SP10 4BJ**

Applicant : **Aster Communities**

Representative : **Mr Ranjit Bhose QC, instructed by
Capsticks Solicitors LLP**

Respondents : **The Long Lessees**

Representative : **Mr Joshua Dubin, instructed by
Talbot Walker LLP (for 66 Lessees)**

Type of Application : **Determination of service charges:
s. 27A Landlord and Tenant Act 1985**

Tribunal Members : **Judge E Morrison
Judge M Tildesley OBE
Mrs H Bowers MRICS**

**Dates and venues of
Hearing** : **27-30 November 2017 at Winchester
Combined Court
20-22 February 2018 at Havant
Justice Centre**

**Date of amended
decision** : **13 July 2018**

**AMENDED DECISION
(amended pursuant to Rule 50)**

1. This case concerns an application made by Aster Communities in January 2017 ("Aster") for a determination of the 2017-18 service charge payable by the long lessees at Kingsway Gardens in respect of major works commenced in that year. The application is made under section 27A of the Landlord and Tenant Act 1985 ("the Act").

The Development

2. Kingsway Gardens is a development of 160 flats originally built in the 1960s by Greater London Council and then handed over to Andover Borough Council. The flats are divided into 5 blocks:

Saxon : 40 flats
Stuart: 24 flats
Tudor: 24 flats
York: 32 flats
Atholl: 40 flats

3. The blocks are arranged in a roughly horseshoe plan with the rear elevations facing inwards onto a green amenity area. The front elevations face the access roads. Originally flat-roofed and comprising three storeys of living accommodation, extensive refurbishment took place in the mid 1980s, including construction of pitched roofs with an additional habitable storey built into the new roof space. Adjoining blocks are connected by walkways and what was previously used as an enclosed clothes-drying area, with a store beneath.
4. Saxon, Stuart, Tudor and York are of a similar design and are referred to in this decision as the "main blocks". Each of these is comprised of sections of eight flats, divided from each either by stairwell access. At the front elevation there are garages at ground level, with four storeys above. At the rear, due to the higher lie of the land, there are just four storeys. Each section comprises two two-bedroom flats on the first storey (referred to as upper ground flats) with level ground access to the rear, two two-bedroom flats on the second storey (referred to as first floor flats) and four one-bedroom duplex flats, side by side, on the top two storeys (referred to as top floor flats).
5. The blocks are of a reinforced concrete column and slab construction, with brick external cavity walls at upper ground and first floors. The flats are accessed via stairwells and along walkways at the front of the block. Part of the front elevation is clad with metal panels or vertical tile hanging. There is a construction joint, acting as an expansion joint, in all of the blocks, with Saxon having two construction joints.
6. The rear elevations are predominantly cavity wall with a brick facing and are more complex in design with a 'staggered' profile. Each flat has a balcony (or patio at the upper ground level) accessed through the lounge which has full-width patio doors and glazing. The sides of the balconies and patios are enclosed by brick walls (the "wing walls")

which rise though three storeys. The balcony fronts are enclosed by concrete outlook walls with metal handrails.

7. At first floor level the lounge is stepped *back* from the main rear elevation wall, which forms the rear wall to the bedrooms. Part of the lounge and about 800mm of the balcony is overhung by the balcony to the top floor flat above. At upper ground level the lounge is stepped *forward* from the main rear elevation wall, and the rear part of the lounge (about 1.65m) and about 650mm of the patio is overhung by the balcony above.
8. Atholl is of the same basic construction as the main blocks but has a simpler design. Access to the flats is via stairwells and walkways to the rear elevation. There are no private balconies to the rear. At the front the upper ground flats have private balconies but they do not overhang any habitable space.
9. Prior to the hearing commencing on 27 November 2017 the Tribunal inspected the property, accompanied by the parties' legal representatives, expert witnesses, the two unrepresented lessees, and others. Contractors were on site carrying out works to Atholl and York. We walked around the outside of all five blocks, and numerous construction and other design features were pointed out to us, the detail of which is referred to as necessary later in this decision. We went inside 13 Stuart, an upper ground flat, where we were shown blistering on the lounge party wall, and onto the balcony of 23 York, a first floor flat, where we were shown the wing walls and other features of the balcony.

The parties and their representation

10. In 2000 the freehold ownership of Kingsway Gardens was transferred to Testway Housing Association. Subsequently, following an amalgamation of housing societies, Aster was formed.
11. Of the 160 flats at Kingsway Gardens, 114 are demised on long lessees, and the lessees of those flats were named as the Respondents to the application. The remaining flats are retained by Aster for general letting purposes.
12. On receipt of the application, each lessee was required to return a completed form to the Tribunal, stating whether they wished to participate in the proceedings. The Tribunal's Directions made it clear that only those lessees returning the form would receive further communications about the case. 81 of the 114 lessees responded stating they wished to participate, most of who appointed the same legal representative. Following a case management hearing on 25 April 2017 detailed directions were issued. Lessees wishing to participate were to required to serve a statement of case by a specified date. Three such statements were received: from Talbot Walker who acted for the majority of the participating lessees, and from two lessees of flats in Atholl, Mrs

Pauline Frost and Mrs Emma Noble, both acting in person. At the hearing, the only other lessee who participated without legal representation was Mr Jonathan Renfrey, another Atholl lessee, who did not attend but was represented by his father Mr Philip Renfrey. As no statement of case was submitted on his behalf, participation was limited to cross-examination of the Applicant's witnesses and making submissions. By the date of the hearing Talbot Walker was instructed by the lessees of 66 flats. Thus a total of 69 lessees participated, directly or through a representative, in the hearing.

The hearings and evidence received

13. The hearing took place over 7 days in November 2017 and February 2018. The hearing bundle ran to over 2600 pages, with additional documents provided (some at the Tribunal's request) in the course of the proceedings. The lessees represented by Talbot Walker had served 66 witness statements, one from each lessee. The Tribunal directed that, in the interests of proportionality, only 4 of these should be included in the bundle and only those lessees permitted to give oral evidence. Of the remainder, 26 were presented in a supplementary bundle, the contents were not agreed by the Applicant, and the Tribunal has not attached any weight to these in reaching its decision. At the Tribunal's request a tabular schedule summarising the evidence in the 66 witness statements was prepared. Save where the contents of this schedule are referred to below, no weight has been attached to it.
14. The Applicant's lay witnesses who gave oral evidence were as follows:
 - Mr Michael McCarthy, a chartered building surveyor employed by the Applicant as Asset Director
 - Mrs Emma Towler, employed by the Applicant as Head of Home Ownership and Service Charges
 - Mr Steve Greenhalgh, employed by the Applicant as Asset Manager (Stock Condition)
15. The Respondent's lay witnesses who gave oral evidence were:
 - Mr Andrew Devereux-Cooke, the resident lessee of 13 Saxon, an upper ground flat
 - Mr Daniel Hanchant, the resident lessee of 4 Tudor, a top floor flat
 - Ms Irina Motovilova, the resident lessee of 28 Saxon, a top floor flat
 - Mr Gary Rayner, the resident lessee of 14 Stuart, an upper ground flat
 - Mrs Pauline Frost, the non-resident lessee of 46 Atholl.
 - Mrs Emma Noble, the non-resident lessee of 26 Atholl.
16. The lay evidence was heard in November 2017. When the hearing resumed in February 2018, the Tribunal heard the expert evidence. The Applicant's expert was Mr Roman Potschynok, a chartered building surveyor employed by Welling Partnership Property and Construction Consultants ("Welling"). The expert instructed by the 66 lessees

represented by Talbot Walker was Mr David Pincott, a chartered building surveyor from Lambert Smith Hampton. Both experts had provided detailed written reports. That the experts' joint statement ran to 36 pages excluding appendices gives some indication of the detail and complexity of their evidence.

The leases

17. There are three types of flat leases. The 80 flats at Saxon, Stuart and Tudor are all long leaseholds with a Type 2 lease, the flats having been sold on the open market following the 1980s refurbishment. The remaining 34 long leasehold flats at York and Atholl, which are mixed tenure blocks, have either Type 1 or Type 3 leases, having originally been sold to tenants exercising their "right to buy". All the leases have been granted for a term of 125 years.
18. Each lease requires the lessee to pay "by way of further additional rent a proportionate part of the costs expenses outgoings and matters mentioned in the [...] Schedule". This is the service charge, and every lessee pays a proportion of the recoverable costs incurred for the "building" in which his flat is situated i.e. his block¹. The lessee's proportion is either specified by the lease or has been determined by the lessor to be an equal proportion. The service charge year runs from 1 April – 31 March. The amount of the charge for the forthcoming year is estimated before the year begins. Type 1 lessees may be required to pay the entire amount on 1 April or by two payments on 1 April and 1 October. Type 2 lessees may elect to pay by equal monthly instalments. Type 3 lessees are required to pay the entire sum demanded in one payment. After the year ends the actual service charge expenditure is calculated and there is a mechanism to provide for balancing payments/credits.
19. Under each lease, the lessor covenants to "keep in reasonable repair and decorate and renew the main structure and in particular the main walls windows and window frames exterior doors and door frames roof gutters and rainwater pipes of the building ... [and the common parts]." The parties do not dispute that all the major works which are the subject of this application are to elements of the buildings that fall within the scope of Aster's repairing obligations.
20. In Type 1 leases the recoverable service charge costs include the costs of works "in the nature of improvements". Type 2 and 3 leases do not provide for improvements.
21. In Type 1 and 2 leases the recoverable costs may include contribution to a fund towards future costs. The Type 1 lease provides that these must be costs "of a periodically recurring nature". In Type 2 leases the fund is described as a "repairs fund". In Type 3 leases there is no provision for a reserve or sinking fund.

¹ Type 2 lessees may also be required to pay a separate service charge in respect of the amenity areas. This has no bearing on the present application.

22. Under the Type 1 lease the lessor is entitled to recover an "administration charge" of 15% plus VAT of the cost of works which it is responsible for carrying out. The Type 2 lease provides that when repairs etc. are carried out by the lessor an "administration charge" of an unspecified amount can be imposed. The Type 3 lease provides that if the lessor does not employ managing agents, it is entitled to charge 15% for administration. All such "administration" charges are recoverable as part of the service charge.

The Law and Jurisdiction

23. The relevant parts of the provisions in the Act are as follows:

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 purposes—

(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.

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) a leasehold valuation tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

...

(7) Where an appropriate amount is set ...the amount of the relevant contribution of the tenant... is limited to the amount so prescribed or determined.

By Regulation 6 of the Services Charges (Consultation etc) (England) Regulations 2003, the appropriate amount for qualifying works is £250.00.

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 ...

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

The service charge demands

24. At the time this application was made, the service charge demands in respect of the costs of the proposed major works had not yet been made. Subsequently demands were sent to lessees, which it is accepted contained errors in the calculations. On 6 June 2017 amended demands were made, upon which the Applicant now relies. The sums demanded on account from each lessee in respect of the major works, inclusive of VAT and a 15% management/administration charge, are²:

Saxon: £29,916.46

Stuart: £31,341.00

York: £26,614.52

Tudor: £32,938.86

Atholl: £11,559.90.

25. The issue before the Tribunal is the extent to which these sums are payable.

The factual background and chronology

26. It is not possible to consider the challenge to the service charges without an understanding of the events which led up to the decision to undertake major works at Kingsway Gardens. These are not in dispute.
27. There is scant evidence as to any previous major works carried out since the 1980s refurbishment. A stock condition survey was carried out in 2006 which "flagged up" certain works but seems to have made no reference to problems with damp or water ingress or rainwater goods. This survey, and any subsequent stock condition survey carried out prior to 2013, was recorded only digitally and has been "overwritten" so that it is no longer retrievable.
28. In February 2009 a pilot scheme to try to remedy problems with the guttering at the rear of Saxon Court was carried out. Mr Devereux-Cooke of 13 Saxon had been complaining of overflowing gutters and damp ingress for some time. There is no mention of the pilot scheme

² The total sums demanded are slightly more than these figures as they include charges for estimated expenditure other than on the major works. That expenditure is not the subject of this application.

on Aster's repair records, and the outcome is not known, save it is clear that the pilot did not result in more extensive works. In 2009/2010 Saxon, Stuart and Tudor were redecorated. Mr McCarthy said that the gutters and rainwater goods would have been cleared as part of these works.

29. In May 2013 Mr Greenhalgh, who had joined Aster in 2012, by chance overheard a remark made by one of Aster's surveyors that expressed concern about the condition of the concrete at Kingsway Gardens. He then visited Kingsway Gardens for the first time and observed not only concrete cracks and spalling, but also other matters which caused him concern. On his recommendation an external consultant, Welling, was appointed to carry out an investigation.
30. Welling provided three reports on the main blocks. The first ("WR1"), dated 29 May 2014, was based on a survey carried out on 3 October 2013 and was prepared by Mr Potschynok. He inspected eight flats across the main blocks. He reported that the most prevalent problem of dampness internally was in the main bedrooms, but there was also damp penetration in the lounge areas. He identified a number of design and construction features which he believed were causing rainwater penetration, which had been made worse by an "overflowing and leaking rainwater disposal system". The report made general recommendations as to remedy but said that further assessment was required.
31. In late October 2013 the southern England experienced one of the most severe autumn storms in 40 years. This was followed by more severe weather in December 2013 and January-February 2014.
32. Welling's second report ("WR2") was produced in November 2014. It was based on surveys carried out in late July 2014 when four Welling surveyors gained access to 81 flats across the main blocks. Using a template, a survey report was prepared for each flat. A Protimeter detector was used to assess the moisture content of some internal surfaces. Photographs were taken. The narrative of the report identified defects which it was said were causing rainwater ingress, the upper ground flats being the most affected. Costings for suggested remedial works were set out, although the scope of the remedial works, particularly to the wing walls, remained uncertain. A pilot project on a "core area" was recommended.
33. The third report produced by Welling ("WR3") is dated 25 January 2016 and like WR1 was authored by Mr Potschynok. It concerns a column of 6 flats at Saxon, all of which adjoin a "construction joint". The focus of the reports was on the wing walls either side of the balconies and patios, and the damp-proofing details within those walls. The report set out options for dealing with the perceived defects within these walls. Again it was recommended that there should be a pilot project. No pilot was in fact ever carried out.

34. Specialist masonry consultants, Bersche-Rolt, were instructed to provide a survey report on the condition of the concrete. This report is dated 11 January 2016 and made recommendations for extensive concrete repairs. Bersche-Rolt also undertook some urgent repairs (not charged to the lessees).
35. On 31 March 2016 the statutory consultation process under section 20 of the Act began with a Notice of Intention ("Stage 1 notice") being sent to all lessees. Over the following months a detailed Specification was prepared by Welling on the instructions of Aster. In late May Aster undertook a pilot encapsulation project to a column of wing walls at Saxon. In October 2016 Welling put the Specification out to tender; returns were received from three contractors. On 16 December 2016 a Notice of Proposals under section 20 ("Stage 2 notice") was issued to the lessees. A contract was entered into with Stepnell, the contractor providing the lowest tender, on 7 April 2017, the contract sum being £3,562,476 + VAT (the original tender sum of £4,843,511 plus VAT having been reduced by removing certain works from the Specification). The works began shortly thereafter.
36. On 20 July 2017 Welling produced a report on the condition of the balcony waterproofing at Atholl.

The issues

37. The principal issue is whether the on account demands are unreasonable in amount because the proposed works giving rise to them include elements which are unnecessary or otherwise unreasonable. This issue is addressed first.
38. Some or all of the Respondents further contend that the on account demands are unreasonable because:
 - (i) The statutory consultation procedure under section 20 was not complied with
 - (ii) Aster did not pay due regard to the financial impact on the lessees and whether it was reasonable to phase the works
 - (iii) Some of the works may constitute improvement not repair
 - (iv) The administration charge of 15% is unreasonable
 - (v) Astor's management of sinking funds impacts on the reasonableness of the sums demands.

These issues are addressed later in this decision.

Whether the on account demands are unreasonable in amount because the proposed works giving rise to them include elements which are unnecessary or otherwise unreasonable

39. It is necessary to consider the evidence separately as regards (i) the main blocks and (ii) Atholl.

(i) The main blocks

40. In the statements of case the following elements of the works were challenged as not being reasonable:

- The replacement of the wing walls
- Full replacement of all balcony asphalt
- Reconfiguration of balcony upstands and consequent replacement of patio doors
- Full fairing coat on exposed concrete
- Overcladding of fascias, soffits and bargeboards in PVCu
- Removal of asbestos verge boards.

These will be considered in turn.

Replacement of the wing walls

41. Aster's case is that many of the wing walls are wet and are a substantial cause of the water ingress into the flats: The wing walls which are to be demolished and rebuilt are those on the rear elevation, either side of the balconies at first floor and top floor level. The estimated cost of this work across the main blocks is £355,660 plus VAT. At first floor level one side of each lounge is a party wall. The wing wall which marks the party boundary at one side of the balcony is referred to as a centre wing wall. The wing wall projecting from the other side of the lounge is referred to as a side wing wall. The side and centre wing walls continue up to the top floor level where the flat lounges form a continuous line. Where lounges adjoin other than on one of these wing walls there is another brick dividing wall.
42. The centre wing walls are, with five exceptions, formed of two separate half-brick walls with a marginal cavity where the leaves abut. There is a horizontal damp proof course along the length of these walls, at the level of the top of the balcony asphalt upstand. Where the wing wall joins the building, at the edge of the lounge patio doors, there is a vertical damp proof membrane.
43. The five exceptions occur where there is a "construction joint". There are two construction joints in Saxon, and one in each of Stuart, Tudor and York. At these locations the wing walls are of doubled up, with a small gap between the two which has been filled with fibreboard. This construction joint and the fibreboard continue into the building as the

party wall, bypassing the vertical damp proof course. It is common ground that the fibreboard has become wet.

44. The construction of and damp-proofing detail to the side wing walls, built in the 1980s, is more complex. At first floor level the side wing wall projecting from the corner of the lounge to the corner where it meets the main rear elevation is a cavity wall with an outer leaf of brick, and an inner leaf of blockwork, the cavity having been filled with insulation beads. On the other side of this wall is a bedroom, and below is the wall between the lounge and bedroom of the upper ground flat. A cavity tray has been fitted to this cavity wall at the level of the balcony upstand. Beyond the junction with the rear elevation wall, the wing wall extends as a solid wall similar in construction to the centre wing walls. A horizontal damp proof course at the level of the balcony asphalt upstand extends along the solid wall and laps beneath the cavity tray within the cavity wall by some 3-4" before it ends. Where the cavity part of the wing wall meets the side edge of the lounge patio doors, there is also a vertical damp proof membrane.
45. The concrete slab forming the balcony abuts the wing walls, with a bitumastic coating applied to the edge of the slab.
46. At upper ground level, the side wing wall is a cavity wall from the corner of the lounge back to the main rear elevation wall. This cavity wall is underneath the solid side wing wall above. Projecting away from the building alongside the patio the wing wall is again a solid wall.
47. At top floor level the side wing walls are solid walls and do not abut any habitable space. At this level the side wing walls are protected by the roof overhang.
48. Running along the tops of the solid wing walls at first floor level, which are partly angled diagonally downwards, and along some of the tops of the solid wing walls at top floor level, are rainwater downpipes. It is agreed by the parties that all rainwater goods should be replaced as part of the major works, and that the existing design is complex. The Specification calls for some revision of the design. One system which takes rainwater from roof level down along the top of the centre wing walls, including those with construction joints, collecting water from the balconies along the way, contains no fewer than 26 connections. The downpipe is not continuous; in particular there is a break at each balcony level where there is an open gutter. There is a separate system from eaves level down along the side wing walls which has no fewer than 7 connections. A third system from roof level down between the first and upper ground bedroom party wall also incorporates an open gutter at the top floor balcony level and has no fewer than 15 connections.
49. The experts agree that there has been water ingress in some flats at various points in time. It is also agreed that the rainwater goods have been a contributory cause. The extent of the water ingress attributable

to alleged design or constructional defects in the wing walls themselves, and what remedial action is required, is not agreed.

50. We deal first with the evidence of the extent of water ingress. The evidence prior to WR1 is scant. The "job history" records maintained by Aster from April 2007 contain few references to internal damp, although Aster accepts that pre-2010 records may be incomplete. There are more entries relating to blocked or overflowing rainwater goods. Two lessees gave evidence as to internal damp in their flats. Mr Devereux-Cooke complained about damp in a bedroom and overflowing gutters and pipes as from 2007. Mr Rayner stated he reported damp in his bedroom by the party wall and downpipe in about 2009, and nothing was done. He took remedial action himself, clearing a gutter, and applying internal damp roofing to the affected wall.
51. At the time of the WR1 survey, 8 flats were inspected: 6 upper ground and 2 first floor flats. WR1 does not specify the extent of damp found in each flat, save for stating that there was particularly severe damp in the bedrooms of ground floor flats 5 and 6 Stuart where the bedroom party walls met the rear main walls. However by the time the report was finalised in May 2014, eight months later, it is said that "the damp levels appear to have reduced following removal of the cavity wall insulation and... some of the plaster".
52. The WR2 surveys were conducted in the summer following the particularly bad winter of 2013-14. WR2 states that Protimeter readings of 0-15 indicate dry conditions, 16-20 is borderline, and 21-99 indicate damp conditions. The narrative comments on the individual survey reports are not extensive but they cast some light on whether evidence of damp can be attributed to water ingress from outside. For example, the survey report for 7 Saxon notes a reading of 25 and wet plaster on the lounge party wall, but also records "severe issues in this flat and it believed [sic] that some of the problems are down to lifestyle" with lack of ventilation and condensation.
53. The (unknown) author of WR2 attempted to summarise the results of the surveys in tabular form. Taking Saxon as an example, he suggests that 44.44% of the block suffered from "water ingress", 40.74% suffered from "damp not water" and 55.56% suffered from "defective rainwater goods". Yet 7 Saxon is recorded in this table as suffering from "water ingress" but not from "damp not water", which appears inconsistent with the comments above.
54. WR3 looked at a column of 6 flats in Saxon over three floors, and 23 York, all next to a construction joint, and focussed on what was revealed by the exposure of the cavities in the wing walls. There is no specific information provided as to the whereabouts of the damp in these flats.
55. Between 2014 and 2016 Aster's surveyors also attempted to monitor the damp problems. They only took readings in the flat lounges. A table

of their findings was in evidence. It lists 34 flats said to be those "where the initial reading was above 19 or there was no initial access". These flats were revisited on unknown dates in 2015, Jan/Feb 2016, April 2016 and Oct/Nov 2016. Not all flats were accessed on all inspections. Mr Greenhalgh told the Tribunal that the surveyor took 9 readings on each side of the lounge wall; the table records only the highest reading, but not its precise location, other than the final set of readings which are said to have been taken close to the patio doors. According to the table, works carried out over the period of the inspections included clearing and repairing gutters, downpipes and gulleys, removal of cavity wall insulation and removal of vegetation from the walls. Over the period the readings in every flat reduced. Flats which had cavity wall insulation removed, and which originally had had some of the highest readings of up to 100, saw very significant reductions. Of the final readings taken in April 2016 before the Specification was prepared, only two of the flats inspected had readings of over 19, the highest being 32 in a top floor flat. In Oct/Nov 2016, a larger number of flats were accessed. Only five had readings of over 19 and the author of the Aster table notes that two of these units, in York, have no indication of mould growth or other ill effects from dampness.

56. Merging the last two sets of readings, there are only six flats with readings of over 15. The centre wing wall to four of the flats listed in the table was encapsulated with a waterproof coating in May 2016. Only one of these flats, 6 Saxon, still had a high reading in 2016.
57. Accordingly while the impression given by the WR2 summary tables is of widespread damp problems in 2014, the impression given by the Aster survey table is of much more limited damp by 2016. It is possible that both are correct, and that actions taken by Aster between the two dates, notably better maintenance of the rainwater goods and removal of wet cavity wall insulation, brought about a significant improvement. However, Mr Pincott does not consider that the WR2 summary tables provide an adequate analysis. He prepared diagrams of the blocks ("dot diagrams") to plot the location of internal dampness in the flats as revealed by the WR2 surveys. These were appended to the experts' joint statement. The accuracy of these diagrams was not challenged by the Applicant, other than one comment made by Mr Potschynok that he thought there "were a few more locations of damp" but he was unable to specify where these were. The Tribunal finds these dot diagrams to be the most reliable evidential summary as to the incidence and location of internal dampness as of July 2014. They show that most upper ground flats had some dampness at high level in no more than one room, and that some flats had some dampness at first floor level. In the top floor flats there was no damp in Stuart and Tudor, and in Saxon and York it was limited to a few flats.
58. We now turn to the alleged defects in the wing walls and whether these can be shown to have caused water ingress.

59. In the course of the Welling reports, a number of the cavities in the side wing wall at upper ground and first floor level were opened up. Mr Potschynok is of the view that the damp-proofing detail within the first floor side wing walls requires improvement in order to prevent water ingress. Specifically:
- The cavity tray has a rough "cut" end instead of a stop end formed by welding on a separate piece.
 - An architects' drawing from the 1980s works shows the cavity tray should extend approximately one brick's length further than it has actually been installed. As a result there is a small area by the corner of the rear elevation wall where downward water penetration is prevented neither by the cavity tray or the horizontal damp proof course. Thus water may get into the balcony slab and migrate down into the flat below.
 - The existing bitumastic coating at the edge of the balcony slab is not the best choice and a flexible damp proof membrane would provide better protection, along with a separate cavity tray above the cavity wall below which forms part of the upper ground lounge wall.
 - The vertical damp proof course where the edges of the patio doors meet the wing walls has deteriorated. This defect was mentioned in WR3 as having been found during exposure works at 23 York.
60. The wing walls have become and stayed damp. Where there is a construction joint wall the fibreboard has become wet and this can migrate into the building along the party wall. Mr Potschynok believes that the fibreboard must be removed. Many of the wing walls have efflorescence and even vegetation growing from them. To help prevent the walls becoming damp, and that damp travelling into the building, the walls require more protection against rain penetration. WR2 noted inadequate overhang at the top of the wing walls to prevent water dripping down the wall. It is also agreed that the brickwork in the wing walls requires general repair e.g to pointing, and that the vertical joint where they meet the front balcony wall is a weak point where the mastic has failed and water can penetrate.
61. In giving evidence Mr Potschynok was asked to identify flats suffering damp due to the alleged problem with the cavity tray detailing in the side wing wall above. The only flat he mentioned was 6 Stuart, at upper ground level, where the incidence of damp was in the right place. Although he had not actually inspected the cavity tray in the side wing wall to 8 Stuart, the flat above, he thought the exposure works had established that all the cavity trays suffered from the same defect. In cross-examination by Mr Dubin, the dot diagrams were used to identify all possible upper ground flats where damp might be related to the cavity tray: 1 Saxon, 5 Saxon, 13 Saxon, 6 Stuart, 14 Stuart and 21 York. The WR2 survey for each of these flats was put to Mr Potschynok. In respect of 1 Saxon, Mr Potschynok accepted the photographs revealed that damp in fact was at low level. At 5 Saxon there were no photographs or readings to corroborate internal damp. At 13 Saxon, there was internal damp at high level on both sides of the lounge. In the

case of 6 Stuart, Mr Potschynok accepted that the survey of 8 Stuart above showed cracks in the balcony asphalt which might also have caused the damp below. For 14 Stuart the survey revealed that the high damp reading was in fact on the outside wing wall, not inside the flat. At 21 York, the survey records were again unclear as to which wall was damp; Mr Potschynok thought this was down to error and the damp was in fact under cavity tray, and could not be attributed to condensation.

62. A similar examination was carried out to identify internal damp that could be attributed to lack of a vertical damp proof membrane at the edge of the balcony slab. Mr Potschynok identified damp in 6 Stuart as being in the right location, while accepting that defective asphalt above might also be a cause. Although he said that other flats might be affected by this defect, he was unable to identify them.
63. In respect of problems with the vertical damp proof courses between the wing walls and the patio doors, which might cause internal damp near the doors, five flats were considered but in none of these was Mr Potschynok able to state positively that damp had been caused by this defect. At 6 Saxon Mr Potschynok could not say if the damp shown on the photographs was due to this defect or due to wet fibreboard in the construction joint. At 7 Saxon he said the damp could be due to this defect or to a blocked gutter and downpipe shown in photographs of the flat above; there could be a combination of factors. At 2 Stuart he thought the damp could be attributed to this defect, while noting severe efflorescence on the external wing wall close to the patio doors. At 7 Tudor there was no photograph of the damp, which had a reading of 24, but Mr Potschynok thought this defect, along with condensation, were possible causes. At 16 Tudor it was accepted there was no manifestation of dampness. At none of these flats was there evidence that the vertical damp proof membrane had actually failed. These flats did not include 23 York, where Mr Potschynok had originally made his observation about this defect in WR3. When it was put to him by Mr Dubin that this was not a significant problem, his response was that it was "potentially" an issue for the blocks. This evidence is insufficient for the Tribunal to be satisfied, on a balance of probabilities, that this defect, if it exists, has caused internal damp.
64. The evidence as to damp caused by the fibreboard in the construction joints was also considered. Some flats adjoining three of the five construction joints (in Saxon, Stuart and York) have been potentially affected, all at upper ground or first floor level. At Saxon the flats are 6,8,13 and 15. The surveys for 8 and 15 also revealed blocked or overgrown vegetation in the rainwater goods along the party wall. At Stuart Mr Potschynok accepted that only flat 13 was potentially affected by this defect. At 16 York he identified the fibreboard as one possible cause of the damp. At 21 York the situation was uncertain as Mr Potschynok had said he believed the damp was in fact on the opposite wall (see para. 61 above).

65. **The Tribunal has carefully considered this evidence and concludes from the above that as of July 2014, there were 8 flats suffering from damp which might be attributed to alleged defects in the design and construction of the wing walls: 6,8,13 and 15 Saxon, 6 and 13 Stuart, and 16 and 21 York. This conclusion is largely consistent with Mr Pincotts' view as expressed in the joint experts' statement. All the flats are next to a construction joint. Of these only 6 Saxon still had a high reading (34) taken by Aster in 2016. It should be remembered that the WR2 readings followed exceptionally bad winter storms.**
66. In WR1 Mr Potschynok noted the options of rebuilding or repairing the wing walls, or encapsulating (overcladding) them. WR2 left open the same options as possibilities. Similarly WR3 set out the options along the party wall as: (i) taking down as much as required to rectify the poor damp-proofing detail, and then rebuild, or (ii) enclosing the first and top floor wing walls with a weatherproof cladding or coating, or a liquid plastic waterproof overcoating. Mr Potschynok's actual recommendation along the construction joint party wall at Saxon as set out in WR3 was to remove the fibreboard, repair the wall as required and, after drying out, enclose with a liquid waterproof system.
67. On 24 February 2016, Mr Greenhalgh sent an email to Mr Potschynok seeking a fee quote for writing the Specification. He lists the items of work which the Specification should cover. In respect of wing walls, the work is described as "partial removal and replacement to facilitate the removal/replacement of the fibreboard infill", "weather protection of solid walls" and "capping to solid walls". However, at some point between this date and the finalisation of the Specification in about October 2016, a decision was made by Aster to take down and completely rebuild all the wing walls at first and top floor level, incorporating improvements to the internal damp-proofing details. There is no contemporaneous record indicating how or why this decision was made, but in his expert report Mr Potschynok refers to Aster's aim as expressed by Mr Greenhalgh in one of the question and answer sheets sent to Aster by Welling: "We want to end up with a group of buildings that need little or no planned work for a considerable number of years". In their oral evidence Mr McCarthy and Mr Greenhalgh confirmed this was Aster's objective, believing that this would lead to overall savings in the long term.
68. At paragraph 6.5 of his expert report Mr Potschynok sought to explain why, although he had originally favoured encapsulation, this option "had to be discounted" and the option of rebuilding "was ultimately chosen". He did go so far as to say this was his recommendation; he refers to "the request from Aster that the walls be rebuilt in any case". The main reasons given by Mr Potchynok were (a) the walls would need to dry out before being encapsulated; fibreboard in the construction joint walls might not dry sufficiently to be removed (b) lessees might fix items to the walls puncturing the cladding or encapsulation so that

water could get in (c) a waterproof membrane could trap moisture (d) it had been decided to replace the balcony asphalt and rebuilding the walls could be done hand in hand with this (e) new walls would have a longer life than cladding and thus better met Aster's aim as stated above (f) taking down the walls would enable all the damp-proofing details within the walls to be improved and, with non-porous engineering bricks fitted along the tops of the new walls, would provide a long term robust solution that removed the risk of water penetration into the building. He also stated that Aster had reported that the May 2016 encapsulation trial had not been successful, although he did not personally verify this.

69. Thus it is Aster's case that taking down and rebuilding all the wing walls is a necessary repair. The lessees' case is that a lesser remedy is all that is reasonably required.
70. Mr Pincott's report was prepared following an inspection of Kingsway Gardens in July 2017, including eleven flats internally. The Welling and Bersche-Rolt reports were made available to him. He told the Tribunal that Protimeter readings measure wood moisture content and when tested on plaster the readings provide only a relative indication of dampness and have no absolute empirical meaning.
71. Mr Pincott's view is that Welling have paid too much attention to perceived defects within the wing walls, and insufficient attention to, among other things, defective guttering and downpipes which have caused the wing walls to be saturated over many years, the deterioration of pointing to the walls, and lack of weather protection to the exposed faces of those walls. He does not believe that the damp-proofing details identified by Mr Potschynok within the walls can be shown to be a significant cause of damp inside the flats, and considers that only 6-7 flats can be shown to have been suffering damp in July 2014 possibly due to those details. He agrees with Mr Potschynok that the walls are in disrepair and may cause water ingress, but does not believe that rectification of the damp-proofing details identified by Mr Porschynok is required or that the walls need to be rebuilt. He considers that the following will be a cost-effective solution:
 - New rainwater goods, with a modified design, as called for by the Specification, which, assuming proper maintenance, will prevent water spilling onto the walls;
 - Copings (as noted in WR2 but not included in the Specification for the new walls) on top of the wing walls to deflect rain away from the vertical faces of the walls; the engineering bricks called for in Specification do not protrude over the edges of the walls and thus do not deflect water in the same way as would copings;
 - Repairs to the existing brickwork as required e.g re-pointing;
 - Once the above has allowed the walls to dry out, all wing walls save those at top floor level which are protected by the roof projections should be clad, not with a waterproof membrane, but with a vapour

permeable protective render. Water might still splash onto the render and enter the render, but it would evaporate before it could get any further. Moisture would not be trapped inside the wall, and therefore would not migrate inside the building.

72. Mr Pincott believes that the combination of the above would be highly likely to prevent water ingress into the building through the wing walls. He envisaged a process whereby the rainwater goods, copings and brickwork repairs would be attended to early in the year, and then the rendering applied some months later towards the end of the summer. The fibreboard would need to have dried out first but he believed that it would do so within that period. However, he eventually acknowledged it might not dry out sufficiently if there was very wet spring weather and that could then prevent the rendering of the construction joint walls.
73. Mr Potschynok was prepared to acknowledge that Mr Pincott's proposal was an option, a view which is consistent with the Welling reports, and would probably cost less than rebuilding the wing walls. However he stressed what he thought were justifiable concerns about lessees drilling into and thus damaging the render, while accepting that "a few screws" would not cause a problem.
74. Thus in reality both experts accept that overcladding with render, rather than rebuilding, is an option, but Mr Potschynok now prefers rebuilding for the reasons set out above.
75. There was ample evidence before the Tribunal that overflowing rainwater goods, some filled with vegetation, has caused not only wing walls, but also parts of the main rear elevation walls to become saturated. This evidence was found in the Welling reports and photographs, other photographs which Mr Rayner said he took in 2015, and the evidence of Mr Devereux-Cooke, Ms Motovilova and Mr Rayner. The schedule of the lessee witness statements notes that 48 of the 66 lessees represented by Talbot Walker make reference in their statements to blocked guttering. Aster cannot establish that there was anything but reactive gutter maintenance until some months after the investigation began. The WR2 surveys show that there were still gutters containing overgrown vegetation in July 2014. **The Tribunal finds that failure properly to maintain the rainwater goods over a long period of time has been a substantial cause of the wing walls becoming wet.**
76. Before dealing with the appropriate remedy for the wing walls, mention should also be made of one further alleged defect while, while not in the wing walls, was said to be capable of remedy as part of rebuilding some of wing walls at top floor level. The underside of the balcony slabs incorporate a groove, or throating, designed to divert rainwater from the rear elevation wall. At the party wall between flat bedrooms, which occurs at 11 locations over the main blocks, there is a vertical brick pier built in the 1980s, with a rainwater pipe on top of it, that bridges the

throating, and in Mr Potschynok's view this bridging allows rainwater potentially to travel along the underside of the slabs and get into the building, manifesting itself in first floor bedrooms along the party wall. Mr Potschynok identified bedroom damp in 7 and 8 York in 2014 as a likely result of this problem. He maintained this despite accepting that the photograph in WR2 appeared to show that the 7 York damp was at low level and that the damp in 8 York could also be caused to lifestyle/condensation issues. He thought bedroom damp in 7 and 8 Tudor might also be attributed to the bridged throating. The rebuilding of the wing walls above would incorporate detailing where they abut the front balcony wall to "design out" this defect.

77. Mr Pincott addressed this issue in the experts' joint statement. He noted that the locations in question are just below gutters which have overflowed due to blockages. He did not believe that the damp in 7 and 8 York could be attributed to the bridged throating because it was at low level and at 8 York it could also be related to condensation. In his oral evidence he drew attention to photographs taken by Aster in 2015, several of which showed obviously damp brickwork around the brick piers. Just above the point where it is thought water might track in is an open gutter taking water from the top floor balconies and the roof above. Mention has been made above of longstanding problems with overflowing and blocked rainwater goods. It is noted that Aster did not deem it necessary to include the bedrooms in their monitoring surveys between 2014 and 2016, which is perhaps an indication that they no longer considered this was a serious problem. The Tribunal notes that the WR2 survey for 7 Tudor has one reference (but no photograph) to high level bedroom ceiling damp at the party wall, but at 8 Tudor the damp is at low level. Overall the Tribunal finds the evidence that there has been water ingress due to the bridged throatings to be insufficient, and thus not a factor supporting the need to rebuild all the wing walls.
78. The Tribunal is asked to decide whether replacement of all the wing walls at first and top floor level is necessary. The experts have different views. It was put to us that Mr Potschynok could not be regarded as truly independent, because of his involvement in the Welling investigation and his continued employment by Welling who are project managers for the works, but we are satisfied that both experts gave their evidence in a neutral manner and did their utmost to assist the Tribunal. However, while there is a degree of common ground, they differ on the critical issue of the extent to which the wing wall design defects identified by Mr Potschynok have caused internal damp and thus require remedy. Mr Potschynok was unable to point to flats additional to those identified by Mr Pincott as being possibly affected by these defects. We find that Mr Pincott has carried out the more detailed and careful analysis and prefer his evidence both on this issue, and as to the extent of the consequential remedial work required.
79. Welling never made a positive recommendation that rebuilding was required. The decision to rebuild was made by Aster, not Mr Potschynok or anyone else at Welling, and the Tribunal finds that the

principal reason for this decision was Aster's stated aim of, essentially, minimising future maintenance work for many years. However, there is very limited concrete evidence of damp problems within the flats that can be definitely traced to issues identified by Mr Potschynok with the cavity tray and vertical damp-proofing details within the side wing walls, which would require at least partial rebuilding to improve. Only 13 Saxon 6 Stuart and 21 York were identified as potentially affected by these issues. There are seven flats (including 13 Saxon and 21 York) which have been potentially affected by damp fibreboard in the construction joint in the centre wing walls. Of these flats, there is no evidence that any of them save 6 Saxon still had a high Protimeter reading in the flat lounge in 2016. On the other hand it is accepted by both experts that in the past flats have suffered damp ingress on internal walls in positions which are on line either horizontally or vertically with the wing walls.

80. We bear in mind that no proper pilot was carried out. Although a centre wing wall in Saxon was encapsulated with a waterproof coating in May 2016 there is no reliable evidence of whether the wall beneath dried out as a result. The coating used was not the type of porous product recommended by Mr Pincott. In any event the Specification calling for rebuilding of the wing walls was prepared before there was time for a proper evaluation of the result to be made.
81. Weighing up all the evidence as summarised above, **the Tribunal is not convinced that defects in the damp-proofing design identified by Mr Potschynok have resulted in material water ingress to the flats, except in eight flats adjoining construction joints. The Tribunal is therefore not satisfied that rebuilding of wing walls is required, save in respect of the five walls containing construction joints.** The experts are agreed that the damp fibreboard in three of these joints has caused problems. It needs to be removed or dried out and remain dry. We accept Mr. Potchsynok's unchallenged evidence that while it is wet it cannot be removed without taking down the wall. Mr Pincott accepted that it might not dry sufficiently to permit the walls to be clad as he recommends. The Tribunal finds that the fibreboard infill is a design defect which has led to disrepair and concludes that it is a prudent repair to remove the fibreboard and rebuild all five construction joint walls at first and top floor level as prophylactic measure. However, there is insufficient evidence that rebuilding all the many other wing walls, both side and centre, is required. There is agreement that the rainwater goods have been a contributory cause to the damp problems, and they are being renewed. We accept Mr Pincott's basic premise that, no matter how water has entered the building through the wing walls, if they dry out and do not become damp again, damp will not find its way from them into the building. The internal wall damp-proofing details do not require improvement to achieve this.
82. We do not accept that the anticipated problem of lessees seriously piercing of the render is something that cannot be dealt with by

appropriate management by Aster. All the leases include provision permitting the lessor to enter on reasonable notice to examine the condition of the flat. Some parts of the balcony wing walls are visible from ground level. Access is arranged in any event for cyclical redecoration.

83. Accordingly, on a balance of probabilities, we find that the additional measures proposed by Mr Pincott would prevent water ingress into the building through the wing walls, including those at upper ground level which Aster's proposal leaves intact but largely unprotected. This would be a reasonable outcome at a more affordable cost to the lessees.

Full replacement of all balcony asphalt

84. The Specification calls for all the balcony asphalt, which has been laid on top of the concrete balcony slab, to be replaced, at an estimated cost of £299,400.00 plus VAT. Aster contends this is work required because water has got under the asphalt into the insulation layer below and has migrated through the concrete slab into the flat lounges below.
85. WR1 made brief mention of the balcony asphalt: "The general condition of the balcony asphalt may be contributing to the damp penetration. Splits were noticed to some of the upstands...". The recommendations included "Attending to the deteriorating asphalt". WR2 noted creep and cracks around the upstands and some blistering of the surface covering, but the estimated renewal date is noted as being at least 20 years ahead. In WR3 the only mention of asphalt is under the heading of "Ancillary works" where overcoating (not replacement) of the asphalt is mentioned for possible inclusion in a pilot project. Mr Greenhalgh's initial email to Welling setting out the scope of the Specification makes no mention of the balcony asphalt. The Stage 1 notice dated 31 March 2016 and Stage 2 notice dated 16 December 2016 are both similarly silent.
86. Mr Potschynok's expert report addresses the height of the balcony upstands (dealt with below) but the only justification given for replacement of all the balcony asphalt is as follows: "On 1st July 2016 core samples through selected resident balconies taken by Garland [an asphalt contractor] ... revealed that in all of those exposed, there was trapped water within the insulated asphalt build up. Consequently these could not have been overcoated as the moisture would have remained trapped and therefore had to be stripped and replaced". Mr Potschynok was present when Garland took these readings but he provided no other detail of what Garland had found, its location, or extent.
87. In his oral evidence, Mr Potschynok thought it most likely that water had got underneath the asphalt through cracks and other damage. Simply overcoating the asphalt instead of replacing it would leave the

water in situ, possibly causing cold spots and condensation in rooms below.

88. In the course of the works in 2017, after issue of the service charge demands, core samples were taken from all the balconies at Tudor and York. These showed moisture readings from ranging from dry up to 100, the top reading, in two flats. A Reading of 100 equates to water. Readings of less than 100 measure moisture, not actual water. Mr Potschynok said that these sample readings reinforced the need for the replacement of all the asphalt.
89. Under cross-examination Mr Potschynok accepted that the moisture under the asphalt could have got in through cracks in the perimeter of the asphalt, and that moisture might disperse, although it would reappear unless future penetration was prevented. He accepted one could argue in favour of patch repairs, but pointed out that a warranty would only be provided by the asphalt contractor if all the covering and insulation was replaced.
90. Mr Pincott noted that in the main the balconies are covered with promenade tiles, which protect the asphalt underneath, and the asphalt is only visible around the perimeter. He accepted there was evidence of creep and cracking around the perimeter on some balconies. Cracks and splits could cause water ingress which might affect the flats below. However the asphalt had another 20 years of expected life and did not need wholesale replacement now. Overcoating the asphalt and repairing the perimeter cracks would be sufficient, save possibly in the case of the two flats with sample readings of 100, being 17 York and 24 Tudor where the asphalt might need to be replaced, despite there being no evidence of a problem in the flats below. He felt that moisture below the asphalt would eventually evaporate through the walls in the flats below, and that any residual problems arising could be dealt with on a bespoke basis. Utilising the WR2 survey reports, Mr Pincott stated (without challenge) that there were only 2 flats, 6 Saxon and 6 Stuart, where there had possibly been damp ingress from the balcony asphalt above. If other flats had not by now experienced damp from this cause, it would not happen. Nor did he accept that there was evidence of the asphalt blistering.
91. The Tribunal is only being asked to determine the reasonableness of on account demands made in June 2017. The assessment must be made based on facts known to Aster at that time. The Welling reports do not provide any justification for wholesale replacement of the asphalt on all the balconies. The only possible justification is the brief reference to core sample readings in July 2016 as set out in Mr Potschynok's expert report, which is entirely lacking in any specificity. Moreover, the only evidence that the condition of the asphalt has possibly caused water ingress below is limited to two flats. This cannot justify wholesale replacement of all balcony asphalt. **The Tribunal therefore finds that full replacement of all balcony asphalt is unnecessary.** This conclusion is supported by the Bersche-Rolt Ltd report on

concrete repairs, which states only that the balcony asphalt should be inspected to ensure it is sealed against the wall to control water ingress.

92. A further matter arises. The replacement of the balcony asphalt was not part of the section 20 consultation. So far as the Tribunal can ascertain from the voluminous documentation (this point not being addressed during the hearing) the first indication lessees would have received that this work was included in the specification was in Aster's replies to the lessees' Stage 2 observations dated 10 February 2017, although it had been mentioned in communications sent much earlier to the lessees in January – March 2015. Even if Aster can eventually justify some or complete balcony asphalt replacement based on what has been discovered in the course of the works, and seeks to recover the cost from the lessees, an application for dispensation under section 20ZA of the Act would seem to be required.

Reconfiguration of balcony upstands and consequent replacement of patio doors

93. Aster intend to increase the upstand and fit new patio doors at first and top floor levels. The Tribunal's understanding from the original costs breakdowns provided in the bundle (no alternative figures being provided), is that the estimated cost of the new patio doors for the main blocks is £275,718.00 plus VAT. The cost of increasing the balcony upstand height is understood to be part of the balcony costs referred to at paragraph 84 above. Mr Potschynok explained that the modern industry standard is for an upstand of 150 mm height around all sides of the balcony, to prevent water splashing behind it. Existing upstand heights on the balconies below the patio doors vary widely. Measurements at Tudor taken in 2017 after works began showed heights ranging from 70 – 132mm and at York from 45-125mm. The plan was to increase all the upstands alongside the works of asphalt replacement and rebuilding of the wing walls. The asphalt contractor would not provide a guarantee for abutments where the upstand was less than 150mm. Mr McCarthy and Mr Greenhalgh both gave evidence that in some flats the existing upstand below the doors was as low as 40 mm. The NHBC guidance is for 75 mm minimum under a threshold. Some lessees had put decking on top of the promenade tiles further reducing the differential in height.
94. Aster had already specified replacement of all patio doors in February 2016, including those which had previously been replaced by lessees. Mr Potschynok described this decision as "providing the opportunity to increase the height of the threshold upstands at the same time". He confirmed that no survey of the patio doors had been done; it was not possible to say how many were in a state of disrepair. Mr McCarthy said that some of the existing patio doors were more serviceable than others. The new doors would meet modern standards of ventilation and performance. They will match the window design in that the doors open out onto the balcony in place of sliding doors. It was not possible to re-

use old doors because the new aperture, after raising the upstand height, was smaller.

95. Mr Potschynok could not identify any flats below door thresholds that had been affected by water ingress at this location. Aster's only evidence about this was a comment by Mr Greenhalgh that, during his initial inspection in May 2013, he saw ceiling damp in an upper ground flat which appeared to be beneath an area in the balcony above where the upstand had become detached from the wall.
96. Mr Pincott denied there was any evidence of water penetration due to low upstands. If the upstands were just being repaired there was no need to meet the new 150 mm standard. He felt Aster was placing too much importance on the need for a warranty. If residents had fitted decking this would still allow water to percolate through it. In any event the balcony had a fall of 30-40 mm away from the building towards the front edge, and if this was added to an existing low upstand of say 40mm the effective height was then over 70mm. As long as there were adequate water outlets at the front of the balcony water could not get in through the threshold.
97. Although the parties have described the new patio doors as being a consequence of the increased upstand, the Tribunal does not accept that is correct. Mr Greenhalgh's email to Welling of 24 February 2016 specified new patio doors, before any decision was made to increase the height of the upstands.
98. The Tribunal concludes that there is simply no evidence that the patio doors were in disrepair, or that they, or the upstand height, have caused disrepair elsewhere in the building. Accordingly **the Tribunal does not find that either increasing the upstand or replacing the patio doors is necessary to deal with the water ingress.**
99. During the entire hearing Aster's case was put on the basis that the service charge demands included the significant estimated cost of replacing the patio doors. However, in revised costs breakdowns provided following the hearing at the Tribunal's request (because the original breakdowns could not be married up with the sums demanded) all costs in relation to the patio doors had been removed. It follows that although the Tribunal has found that replacing the patio doors is not a cost that will be reasonably incurred, this finding will not affect the sum demanded on account from the lessees.

Full fairing coat on exposed concrete

100. The major works include extensive repairs to the concrete at Kingsway Gardens, to remedy defects which, according to Bersche-Rolt, were in the main caused by lack of cover to the steel reinforcement. The estimated cost for the main blocks is £322,693.37 plus VAT. The defects include spalling of exposed concrete and cracking to the surface. The only element of the repair in dispute was whether it is necessary to

apply a "fairing coat" to the concrete. Where there surfaces were previously painted, an anti-carbonation paint is also to be applied on top of the fairing coat. Mr Potschynok said the fairing coat had both a functional purpose, to protect the steel, and a cosmetic purpose in providing a smooth finish and hiding otherwise visible repairs. A specification sheet from the manufacturers of the proposed fairing coat, Fosroc Renderoc ST 05, confirmed this dual purpose.

101. Although Mr Pincott had expressed doubt in his written report about the utility of the fairing coat originally specified on the ground that its purpose was largely cosmetic, he eventually accepted in cross-examination that Fosroc Renderoc ST 05, now specified in place of the original product referred to, provided additional protection and helped to minimise future problems, particularly as the 1960s reinforcement is shallower than is found in more modern concrete. The Bersche-Rolt report also recommended application of a fairing coat to increase protection. **The Tribunal is satisfied that the fairing coat is a reasonably required element of the repair.**
102. Mr Pincott also expressed doubts about perceived over-zealousness in how the contractors are actually marking up areas of concrete for proposed repair. However this is not relevant in the context of considering an on account service charge demand based on estimated future costs. In addition, he queried that part of the Specification which requires "sharpening up" of concrete edges on the ground that this is an unnecessary improvement. The Tribunal was then told by Aster that since the service charge demands had been made, a contract instruction had been issued omitting this work. While it is therefore the case that the on account demands cover the anticipated costs of sharpening up, which work cannot be justified, it appears to be *de minimis* in the overall context of the concrete repairs³.

Overcladding of fascias, soffits and bargeboards in PVCu and removal of asbestos verge boards

103. The estimated cost of work to eaves across the main blocks is £128,944.67 plus VAT. WR2 reported that the timber elements were "generally in fair condition ... In isolated areas the decoration is showing early signs of failing and in the worst case visual signs of rot". In his expert report Mr Potschynok noted: "Due to the access that would be made available for gutter replacement it is common practice to replace or overboard timber fascias and soffits to reduce future maintenance and costs. Although the existing fascias could have been retained, they would have had to be repaired and redecorated incurring costs in any case and leaving a future maintenance liability". Aster told

³ Furthermore it was not a matter referred to in either the Respondents' statements of case or Mr Pincott's written report.

the Tribunal that where there was existing disrepair this was being remedied before the overcladding was applied.

104. Mr Pincott said that any rotten timber could be repaired by cutting out and piecing in new timber. Then, if external decorations were carried cyclically, the existing timber could be expected to remain in good condition for many years. He accepted that if the eaves boards were overclad then future painting and repair costs would be avoided.
105. The only evidence as to the degree of the current disrepair is that "isolated areas" require attention. The Specification calls for this disrepair to be remedied. The justification for the overcladding is to save the cost of current redecoration and of future repair/redecoration.
106. In order to apply the cladding, the verge-boards, which contain asbestos, must be removed. Mr Potschynok said he had also seen photographs showing that some lessees had affixed items to the bargeboards, and this would also be a reason for their removal, but there was no specific evidence in this regard.
107. Had there been evidence of significant disrepair to the eaves boards which could have been remedied simply by overcladding, the Tribunal would have regarded overcladding as reasonable. However, given the limited extent of the present disrepair, which is being attended to in any event, **the Tribunal cannot find that the additional overcladding, and consequential removal of all the verge-boards, is necessary.** This finding also applies to Atholl.

Discussion as to reasonableness of the works

108. The Tribunal has concluded that rebuilding all but five of the wing walls, replacing all the balcony asphalt, increasing the upstand, installing new patio doors and overcladding the boards at eaves level, are unnecessary works. Lesser works, namely coping and cladding the wing walls, repairing and overcoating the asphalt, and localised timber repair and redecoration at eaves level, will suffice to remedy the disrepair which has materialised.
109. This leaves open the question whether the cost of the works may be recovered through the service charge as *reasonable* costs even if the works are not strictly *necessary*. The two concepts are not synonymous. However Aster did not seek to put its case on this basis. Its pleaded position was that all works were necessary and were all elements which a reasonable and prudent building owner could decide to undertake and which would lead to a reasonable outcome. It should be remembered that Aster is paying its proportionate part of the costs in respect of those 46 flats which are not demised on long leases.

110. In Mr Bhose's closing submissions he said the works decided upon by Aster are required "if long-term solutions are to be provided". Those words are telling. It is accepted that Aster's objective was, as stated by Mr Greenhalgh, "to end up with a group of buildings that needed little or no planned work for a considerable number of years". Aster's future-proofing approach may be commendable if viewed solely in the light of property management, but it does not follow that the expenses of pursuing that objective are recoverable from the lessees via the service charge. Whether that is so will depend on the terms of the leases.
111. Under the leases Astor's obligation is to "keep in reasonable repair and decorate and renew", and the lessee's obligation is to pay his share of this cost. None of the leases require Astor to make improvements, although the Type 1 lease permits improvements and for recovery of their costs through the service charge⁴. The Tribunal has decided that certain elements of the major works go beyond what is necessary, or reasonably required, to remedy the disrepair. They also go beyond the works that were recommended as necessary by its professional advisors, Welling. We also find that more limited works will satisfy the obligation to keep the buildings "in reasonable repair" which is all that the leases require. Giving those words their natural meaning, this standard cannot on any common-sense view oblige lessees to pay now for works which are principally intended to avoid costs that might not be incurred until years ahead or possibly not at all. Furthermore, in view of the substantial additional cost involved, the works we have found to be unnecessary do not fall within the permissible margin of appreciation that should be accorded to a landlord when assessing reasonableness.
112. The aspects of the work which the Tribunal has found to be unnecessary are those which have as their main intention the avoidance or minimisation of future works and costs and are prophylactic in nature. "The general principle is that the work which the landlord is obliged or entitled to carry out is limited to that which is reasonably required to remedy the defect": *Tedworth North Management Limited et al v Miller et al* [2016] UKUT 0522(LC) per Martin Rodger QC. While it is right to say that repair work which is otherwise justified does not cease to be repair merely because it includes an element of preventative measures aimed at preventing future disrepair, the works found to be unnecessary at Kingsway Gardens do not simply include an element of prophylaxis; they can be justified only by reference to the possibility of future disrepair prior to the end of the component's natural life, which was not shown by Aster to be reasonably anticipated if the more limited repairing approach advocated by the lessees was adopted. The exception to this is the eaves boarding, which it is accepted will require some cyclical repair and decoration. However the current disrepair was limited to "isolated" places which can be dealt with at minor expense, compared with the much larger cost of installing

⁴ The potential liability of the Type 1 lessees to pay for improvements is addressed below

cladding throughout the blocks. Furthermore, none of elements concerned were shown to be nearing the end of their natural life.

113. Both Counsel referred the Tribunal to the Court of Appeal decision in *Waller v Hounslow Borough District Council* [2017] EWCA Civ 45. This addressed the issue of whether costs had been “reasonably incurred” within section 19(1) of the Act. It held that this was to be determined by an objective standard of reasonableness, which was a higher standard than rationality. It was not sufficient that the landlord’s decision-making process had been rational; it must also have led to a reasonable outcome. If a landlord chooses a course of action which leads to a reasonable outcome, then the costs of pursuing that outcome will have been reasonably incurred, even if there was a cheaper outcome which was also reasonable. Lewison LJ drew a distinction between works which a landlord was obliged to carry out and those which were optional. If optional works were permitted by the lease the landlord must take particular account of the extent of the interest of the lessees, their views on the proposals, and the financial impact of the proceedings.
114. In this case we are concerned only with section 19(2) of the Act i.e. with the reasonableness of estimated costs which have been demanded in advance. No greater amount than is reasonable is payable on account. Until the costs have actually been incurred and the work done it is not possible to assess whether there has been a “reasonable outcome” as a result of incurring those costs⁵. Insofar as *Waller* should guide this Tribunal’s approach, we take the view that seeking advance payment to cover the estimated costs of works going beyond Astor’s obligation to keep the building “in reasonable repair” cannot be a reasonable outcome because the lease simply does not provide for such costs to be recoverable from the lessees.
115. It is of course possible that while carrying out the works Aster will obtain further evidence supporting the necessity of some of the works which we have found not to be required. If so, it will still be open to Aster to seek to recover the costs from the lessees. However that evidence is not before us now, and **we conclude that insofar as the service charge demands seek sums to cover the cost of unnecessary works, or works that are not reasonably required, those sums are not reasonable.**

Atholl

116. At paragraph 135 below the Tribunal concludes that Aster has failed to comply with the statutory consultation procedures prescribed under section 20 of the Act. Notwithstanding that finding, there is no

⁵ Mr Dubin also submitted that Aster’s decision-making process was not rational, for a number of reasons. The Tribunal did not find this argument of assistance in relation to the main blocks and does not consider it necessary to make any findings on the point..

statutory limit to the amount that can be recovered by way of an on account demand other than section 19(2). The wording of section 20(2) and (3) mean that the £250.00 limit is only applicable once the costs have been incurred. This was recently confirmed by the Upper Tribunal in *23 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 365 (LC). However Aster told the Tribunal that if it was decided that there had been a failure to consult, Aster would not pursue recovery of the on account demands pending the outcome of an application for dispensation under section 20ZA.

117. There are no reports of water ingress into the flats at Atholl, and the scope of the proposed works is much narrower than at the other blocks. Nonetheless Mrs Noble and Mrs Frost questioned why work had been specified without a proper survey report. The Welling surveys and reports did not cover Atholl, although Bersche-Rolt inspected the concrete there as part of its survey. Aster's evidence was that the scope of the work included in the Specification had been arrived at after Mr Potschynok had conducted walk around external surveys with Aster personnel in June and August 2016, but no documentation relating to these surveys was in evidence.
118. The earliest documentary evidence as to when and what decisions were made regarding the works at Atholl, beyond those mentioned in the Atholl Stage 1 notice, is a "Question and Answer Sheet No. 1". This bears no date but it is clear from its contents and the subsequent Question and Answer sheets that it was prepared early in the process of preparing the Specification and in all likelihood before Mr Potschynok had conducted his inspections. Aster stated that "Balcony weatherproofing may require repair or overcoating as there appear to be leaks coming through" and "Repair frost affected balcony separating walls".
119. The service charge demands for Atholl cover the estimated costs of concrete repairs, replacement of rainwater goods, decorations and other minor items, in respect of all of which the Tribunal has no reason to find other than that these works are reasonable. However the demand also seeks to recover the estimated costs of work on residents' balconies at an estimated cost of £102,700.00 plus VAT, eaves boards at £30,752.30 plus VAT, and work on dividing brick walls at £13,940.00 plus VAT.
119. Mr Bhose submitted that the Tribunal should find that all these works "were recommended by an independent expert as ones necessary to remedy ongoing disrepair". The Tribunal cannot accept that is correct.
120. Dealing first with the residents' balconies, there was no survey whatsoever of these until July 2017, after the service charge demands had been issued based on the provisional cost of at least some replacement of the private balcony asphalt and a provisional item covering work to the balcony wing walls. Not only was there no evidence to support the need for replacement of the asphalt at the time

of the demands, but the July 2017 report prepared by Mr Potschynok reaches the opposite conclusion, namely that replacement asphalt is not required, and that overcoating will suffice, along with some brickwork repairs to the walls.

121. In respect of the eaves boards, we refer to the evidence at paragraphs 103-107 above and come to the same conclusion.

122. There is, however, credible evidence that the low brick dividing walls along the access walkways required repair or even replacement. There is a photograph provided as an example showing one such wall in a very poor condition. In his expert report Mr Potschynok states that "given the extent of frost damage and their small size it was felt more practical to rebuild them completely". There was no evidence to contradict this. The budget for this item is relatively modest and the Tribunal finds this work to be reasonable.

122A. Therefore **the Tribunal finds that there is insufficient evidence that the resident balcony works or the eaves board works at Atholl were necessary or have been shown to be reasonable at the time of the service charge demands.** The cost of these items should be deducted from the sum payable by the lessees. Our conclusion in this respect is supported by 23 *Dollis Avenue* where the Upper Tribunal set out a two stage test when considering the reasonableness of on account demands: first, it is necessary to consider whether the landlord's decision-making process was reasonable; second, it is a case of deciding whether the sum to be charged was reasonable. In the case of Atholl, Aster's failure both properly to consult under section 20 (see para. 135 below) and to produce any reliable evidence establishing that the works in question were required and/or fell within the scope of its repairing obligation under the lease demonstrate a deficiency in the rationality, and thus reasonableness, of its decision-making process, such that the first stage test is not met.

123. This leaves the question of whether the lower costs of more limited balcony works, as recommended by Mr Potschynok in July 2017, should be recoverable in substitution for the costs we are not allowing. The Tribunal is required to consider what was reasonable based on what was known at the time of the demands: *Knapper & Others v Francis* [2017] UKUT 3 (LC). There is simply no reliable evidence at all that any balcony works had been found to be required when the demands were made and the Tribunal cannot be expected to guess. The closest evidence is Mr Potschynok's observation in his report: "The flats were not accessed to inspect the balconies, though from an external survey it was evident that these were leaking because of similar detailing issues noted in the other four Blocks. While these were not affecting any inhabited areas, the view was taken that it would be prudent to address these". This very general observation does not give any clue as to the extent of any leakage or establish that any repairs were reasonably required. The balconies are not over any habitable space, and there is no evidence that any leaks were causing damage.

For this reason, and due to the deficiencies in Aster's decision-making process in this regard, no balcony costs are to be recoverable as part of the on account demand.

124. For the avoidance of doubt, we make it clear that if Aster has evidence obtained post-demand that establishes the reasonableness of additional works, then – subject to any issues as to consultation – it may seek to recover the costs it actually incurs in carrying out those works.

Whether the statutory consultation procedure under section 20 was complied with

125. A summary of the requirements of section 20 were summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14 as follows:

“Stage 1: Notice of intention to do the works

Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected”.

126. Talbot Walker's statement of case challenged the sufficiency of the consultation on a number of grounds. Before the hearing these were reduced to the single issue of whether individual observations were not expressly taken into account by Aster. Different points were taken by Mrs Frost and Mrs Noble in respect of Atholl.

127. Ms Motovilova said that she did not consider the Stage 1 notice had contained sufficient information, and that the observations she made in response to the Stage 2 notice were either ignored or not properly answered. Mr Rayner's evidence was that Aster had been hostile towards him, had its own fixed mindset, and did not want to engage in discussion.
128. Mrs Towler gave detailed evidence about the consultation process, and all of Aster's communications to the lessees were exhibited to her witness statement. The evidence demonstrates that, quite apart from the statutory consultation, which began in March 2016, Aster had been keeping the lessees informed through written communications (some very detailed) and meetings with respect to the proposed works as from January 2015. In March 2016 Aster invited lessee participation in Aster's Procurement Group, which was responsible for the tender specification and contractor selection.
129. The Stage 1 notice issued for the main blocks went beyond what was statutorily required by providing a three page document which sought to answer "frequently asked questions". Brief observations were received from four lessees, largely concerned with proposed replacement of the windows. Aster was required only "to have regard" to these observations; it is clear from Aster's response sheet and the subsequent omission of window replacement from the scope of the works that this took place. Aster also responded in detail to observations received from an informal residents association with which Mr Rayner was associated, even though they were submitted outside the statutory period. One month prior to sending out the Stage 2 Notice Aster wrote to all lessees providing an update, directing them to a dedicated webpage, and inviting comments.
130. The Stage 2 Notice is also statutorily compliant. 23 out of 114 lessees (including Atholl lessees) made observations. Aster produced a spreadsheet of all the observations, verbatim; the project team then compiled a 21 page document summarising the observations and responding to them. This was sent out on 10 February 2017. Separate letters were sent to some individuals. Ms Motovilova wanted an individual response which she did not receive until 31 March 2017. Talbot Walker's statement of case annexed observations from Anita Lim of 13 Saxon Court, which it is said were not answered individually or by the 21 page response.
131. The statutory requirement is simply that the landlord must "have regard" to the stage 2 observations. In *Waller*, the Court of Appeal at [38] stated that "the landlord must conscientiously consider the lessees' observations and give them due weight... [this] entails more than simply telling them what is going to happen". There is no cogent evidence that Aster did not do so, even if not every single point made by Ms Motovilova or Ms Lim is addressed by the very detailed 21 page response or other replies. The spreadsheet included all of both Ms

Motovilova's and Ms Lim's observations, along with everyone else's, and this was used to formulate Aster's response. In addition the extra-statutory consultation measures, including lessee involvement in the Procurement Group and provision of information prior to the Stage 2 notice, along with the invitation to comment, demonstrate that the lessees' views were solicited and considered. The Procurement Group omitted a number of significant items from the scope of the original Specification in order to reduce the costs. Furthermore, the stage 2 observations contain very few comments regarding the scope of the works⁶. We accept that Aster acted in good faith and considered that the work left in the Specification was necessary, seen in the light of its stated aim of minimising future maintenance for many years.

132. As to Mr Rayner, the correspondence exhibited by Mrs Towler indicates that it was he, not Aster, who chose to disengage from discussions in about April 2015, and he did not respond to the Stage 2 notice.
133. **Thus, in respect of main blocks, the Tribunal is satisfied that Aster carried out a good faith consultation and did more than that which was statutorily required under section 20.**
134. Turning to Atholl, Mrs Noble, Mrs Frost and Mr Renfrey submitted that the section 20 consultation was defective. The Tribunal agrees. The Stage 1 notice for Atholl makes mention only of:
 - "Rainwater goods (guttering, gullies, fascias, soffits (redesign and replacement
 - External decoration".

The Stage 2 notice sent to Atholl lessees was the same as the one sent to the other blocks. It listed many more major items of work not mentioned in the Stage 1 notice for Atholl, including concrete repairs, wing wall partial removal and replacement, windows and doors. No explanation was provided to Atholl lessees as to why the scope of work had increased.
135. Insofar as lessees can hope to influence a lessor's decision as to what works are to be carried out, and at what cost, their main opportunity within the statutory consultation process arises after receipt of the Stage 1 notice. By the time the Stage 2 notice is sent out, the work has already been specified, and estimates obtained from contractors. The extra-statutory steps taken by Aster in 2015 referred to at paragraph 128 above had not included the Atholl lessees. The lessees at Atholl were therefore denied the opportunity to make representations as to many aspects of the works, as they simply did not even know they were in prospect. **The Tribunal finds that, in respect of the Atholl lessees, the statutory consultation procedure was not complied with.** This does not affect the payability of on account

⁶ This is perhaps understandable given that the Welling reports had not been provided to lessees and the Specification itself is a highly detailed, complex and lengthy document which a person who is not a building professional cannot reasonably be expected fully to comprehend.

demands (see paragraph 116 above) but it will limit each lessee's final contribution to £250.00 unless dispensation is obtained by Aster.

Whether Aster has had due regard to the financial impact on the lessees and whether it was reasonable to phase the works

136. These issues are linked. In *Garside & Anson v RFYC Limited, Maunder Taylor* [2011] UKUT 367 (LC) the Upper Tribunal confirmed that the financial impact of major works on lessees and whether in consequence the works should be phased is capable of being a material consideration when considering whether the costs are reasonably incurred under section 19 (1) (a). Service charges cannot be avoided simply on the grounds of financial hardship, however extreme, and the Tribunal has no power to alter the terms of the lease as to when payment is due.
137. Although the matter was not directly addressed in evidence, it was common ground that most of the resident lessees at Kingsway Gardens are of modest, if not limited, means. The service charge demands are for a sum which represents a sizeable proportion of the value of the flats; it is not possible to be more specific about this as no valuation evidence was adduced, save for one mortgage valuation of Nil for 7 Saxon Court, following an inspection in March 2017, when the valuer was clearly concerned about lack of maintenance to the common parts and exterior and the service charge situation. Mrs Towler accepted that this document evidenced the inability of the lessee of 7 Saxon to obtain a loan at that time to cover her service charge liability, and that the service charge demands have had a serious financial impact on the lessees. However Mrs Towler also believed, based on advice from a local estate agent that she had heard about, that once the works were completed the value of each flat would be considerably increased from its pre-works value. Ms Motovilova stated that Kingsway Gardens is "one of the lowest cost properties in Andover". She put the cost of the works to her at 40% of the value of her one-bedroom flat, which she described as disproportionate. Aster has offered extended interest-free repayment terms of up to 5 years to resident lessees who cannot access funds or borrowing, secured by a charge over the property. Mrs Towler told the Tribunal that in the case of a lessee on a fixed income who genuinely had no means of making payment, Aster would consider deferring repayment until sale. These extended repayment terms are not being offered to the 49 non-resident lessees who are renting out their flats.
138. Ms Motovilova referred to Mr McCarthy's powerpoint presentation in March 2015 and the 30 year plan sent by Aster to all lessees in October 2015, which had given her the impression that the works being considered, and thus payments, would be spread over 5 years.

139. Mrs Noble and Mrs Frost, non-resident lessees who derive an income from their flats, submitted that not all the works to Atholl were urgent and should have been carried out in phases so as to spread the cost. Although they both accepted that phasing the work might increase the overall cost, they said this had to be weighed against any reduction in costs of borrowing for the lessees. However, neither provided any calculations to indicate that savings for lessees might exceed the increased costs.
140. Mr McCarthy explained that the works were being carried out block by block. He did not think it was feasible or cost-effective to defer any works. If the works were split into two contracts, one for each elevation, there would be increased costs, including two sets of preliminaries. It would not make sense to erect scaffolding twice. When it was put to him that mobile platforms or tower scaffolds could be used for the front elevation instead of fixed scaffolding, thus reducing preliminary costs, he pointed out the need to address health and safety issues when mechanical equipment and chemicals were being used at height and in a residential setting. He also explained the post-tender process under which items regarded as merely "nice-to-haves" as opposed to those considered essential had been removed from the Specification in order to reduce the overall cost.
141. Mr Potschynok also took the view that phasing the works would lead to additional costs. Mr Pincott agreed that all works to one elevation should be carried out together to gain the benefit of access, but said it would have been possible to split the works between front and back elevations and/or spread the works over more than one financial year and avoid a full scaffold.
142. The Tribunal is satisfied from the documentation produced by Mrs Towler that Aster was at all times alive to the financial impact on the lessees and the lessees' concerns. The 30 year plan produced in October 2015 phased the initial major works envisaged at that time over two financial years, 2016/17 and 2017/18. Although there is no direct evidence that consideration was given to phasing once the scope of the final Specification was determined, by which time it was too late to start work in 2016/17, the Tribunal accepts Aster's evidence that it was reasonable to enter into one contract for all the works, on the grounds of practicality, efficiency and saving costs. Moreover, to the extent that we have found the works to be necessary, they do not have to become urgent before they are carried out.
143. The preliminaries for a project of this size are substantial; incurring them more than once would add considerably to the cost. Erecting a fixed scaffold is reasonable given the type of work being undertaken and the safety considerations. It is also more efficient in that access is available to different trades in various locations at the same time. While just one contract means that the lessees have been asked to pay all of the estimated costs at one time, that has been mitigated in the case of the resident lessees by the repayment options offered by Aster, in effect

spreading the cost over five years, or in some cases of financial hardship, possibly much longer.

144. Accordingly **the Tribunal does not find that insufficient regard was paid to financial impact and finds that it was reasonable not to phase the works.** In any event the decision of this Tribunal as to the necessity and reasonableness of the proposed works will reduce the amount that the lessees are required to pay.
145. Where works are necessary repairs falling within the service charge and phasing is not reasonable, the financial impact on lessees is not a factor in assessing reasonableness. This may be contrasted with the situation where works are optional improvements.

Whether any of the works are improvements rather than repairs

146. Talbot Walker's amended statement of case pleads that the new patio doors, and possibly also other aspects of the works, are improvements. In closing submissions, Mr Dubin made it clear that he also regarded the upstands and new wing walls incorporating revised damp-proofing details as improvements. Mr Bhose conceded that if the Tribunal found that increasing the upstands did not fall within the covenant to repair, then they, and the patio doors fitted in consequence, would not be recoverable from lessees with Type 2 and 3 leases.
147. The Type 1 lease allows Aster to recover the cost of improvements. This is of course subject to section 19 of the Act. The *Waler* case endorsed the Upper Tribunal's view that a landlord, when carrying out optional improvements, must take particular account of the extent of the lessees' interests, their views on the proposals, and the financial impact.
148. From the schedules provided, the Tribunal is aware that there are 3 lessees in York and 1 lessee in Atholl who have a Type 1 lease. There may be further Type 1 lessees among the 35 lessees who have not participated in these proceedings.
149. *Waler* noted that there is no bright line division at common law between what is a repair and what is an improvement, and the Tribunal does not need to decide, in the case of the Type 2 and 3 lessees, whether any of the works that have been classed as beyond the scope of the repairing obligation can be classed as "improvements". No submissions were made to us specifically in respect of the Type 1 lessees. Aster should now consider its position and decide whether it still seeks to recover from the Type 1 lessees all or some of those costs the Tribunal has disallowed, on the basis that they are permissible improvements. We therefore invite Aster to make submissions on this point **within 28 days of the date of this decision.** If Aster seek to recover those costs, it is likely that further directions will be issued.

Whether the administration charge of 15% is unreasonable

150. Those Type 1 lessees represented by Talbot Walker conceded in their statement of case that they are bound by the 15% charge. At that time, it was not appreciated that there were lessees in York and Atholl with a Type 3 lease.
151. Mrs Frost, Mrs Noble and Mr Renfrey are not bound by this concession; they have either a Type 1 or 3 lease. Type 3 leases also provide for a 15% administration charge. They, and the Type 2 lessees represented by Talbot Walker, take the position that 15% is excessive and unreasonable.
152. Although the Type 1 and 3 leases provide for an administration charge in a fixed percentage, it is nonetheless a variable service charge item within section 18 of the Act because its actual amount "will vary according to the relevant costs".
153. The on account service charge demands include an administration charge, calculated at 15% of the estimated net cost of the major works (exc. VAT). The administration charge itself does not attract VAT. Mrs Towler said that if Aster's actual costs of administering the project turn out to be less than 15% of the net works cost, recovery will be limited to that lower amount, notwithstanding the provision in the Type 1 and 3 leases. She set out an estimate of the costs Aster is incurring in administering the project: Welling project management (on Aster's behalf) at £252,000.00, full-time Clerk of Works and Customer Liaison Officer at £96,000.00 over 60 weeks, and Aster staff time which was calculated (by its finance department using hourly rates) at £147,000.00 up to July 2017. She confirmed there was no duplication of function between Aster and Welling. She was not aware of industry standards for this type of management fee.
154. Mr Potchsynok, perhaps understandably because he is employed by Welling, did not comment on this issue. Mr Pincott stated in his report that in his experience a typical professional fee (including design, specification and contract administration) for an external works project of this value would be in the range of 6-7% of the total cost of the works.
155. Ms Motovilova and Mr Hanchant pointed to arithmetical errors made in a number of letters and the service charge demands, which were not disputed by Mrs Towler, who said that any time spent correcting errors was not going to be charged. Mrs Frost complained of poor previous service charge administration on Aster's part, but we cannot find that is relevant to the reasonableness of these on account demands. Mr Renfrey was particularly critical of Aster's cost management. He

pointed to the fact that the sums originally communicated to lessees as the likely cost of the works had been greatly exceeded by the tenders obtained, and that Aster had never set a firm costs budget or ceiling. Mr McCarthy said the earlier estimated costs figures only covered certain aspects of the works, and that the tender sums reflected the market's appetite for the works of their complexity at the time of the tendering process. In the view of the Tribunal, internal costs management issues are also irrelevant when considering the reasonableness of on account demands based on the cost of works which have been put out to tender on the open market.

156. The Tribunal accepts that Aster will inevitably have to commit a substantial amount of management time, quite apart from the professional project management provided by Welling, in connection with the execution of the works. This is a mixed-tenure fully-occupied estate, and the works are not straightforward. Employing a full-time tenant liaison officer is reasonable, particularly bearing in mind the access issues. Welling's fee appears to be in the range of what Mr Pincott suggested appropriate for professional services. Although an overall charge 15% is at the top end of what might be reasonable **the Tribunal does not find the administration charge to be unreasonable** as an element of the on account demand. As a result of the Tribunal's decisions on the scope of works, the charge will in any event be for a reduced sum.

Whether Astor's management of the sinking funds impacts on the reasonableness of the sums demanded

157. The Type 1 and 2 leases provide for a sinking fund. After consultation with lessees as to the establishment and level of contributions, a sinking fund was established in 2007 for Saxon, Stuart and Tudor, where all lessees have Type 2 leases. Each lessee paid £220.00 per annum; the amount was never reviewed. Some monies were expended on cyclical redecorations. Each lessee's share of the sinking fund at the time the 2017/18 on account demands were issued was under £2000.00. The Talbot Walker lessees alleged that Aster should have kept the sinking fund contributions under review and collected larger sums to put towards major works, and that the Type 1 lessees had been prejudiced by the failure to establish any sinking fund at all.
158. However, at the conclusion of the hearing Mr Dubin conceded that any failures in connection with the sinking funds had no direct legal consequence. The Tribunal agrees.

Historic neglect

159. The issue of historic neglect was put forward in Talbot Walker's statement of case. The potential impact of a claim of historic neglect in connection with the recoverability of service charges was enunciated

the Upper Tribunal in *Daejan Properties Limited v Griffin* [2014]UKUT 0206 (LC):

89. The only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that, but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided. In those circumstances the tenant to whom the repairing obligation was owed has a claim in damages for breach of covenant, and that claim may be set off against the same tenant's liability to contribute through the service charge to the cost of the remedial work. The damages which the tenant could claim, and the corresponding set off available in such a case, is comprised of two elements: first, the amount by which the cost of remedial work has increased as a result of the landlord's failure to carry out the work at the earliest time it was obliged to do so; and, secondly, any sum which the tenant is entitled to receive in general damages for inconvenience or discomfort if the demised premises themselves were affected by the landlord's breach of covenant.

160. The issue was not seriously advanced at the hearing. No individual lessee put forward a claim of set-off, and there was no evidence as to any specific sums of money that might have been saved if repairs had been carried out by Aster at an earlier point in time, even assuming that Aster had been put on notice and that a breach of the repairing covenant could be established. The Tribunal does not make a positive finding that there has been no historic neglect, but for the avoidance of doubt makes it clear that no cogent evidence was adduced on the issue.

Determination of the amount payable

161. The Tribunal has found the cost of certain works covered by the on account demands to be unreasonable. Specifically, costs relating to the eaves goods, wing walls, and balcony asphalt must be reduced to a reasonable amount, in accordance with section 19(2) of the Act.
162. The Tribunal has used the revised block cost breakdowns, provided by Capsticks under cover of a letter dated 16 March 2018, as the basis for its calculations. The totals in these breakdowns equate to the sums demanded on account from the lessees for major works (including management fees).
163. The block cost breakdowns are in spreadsheet format. For each block, one figure has been given for "Eaves and RWWG [rainwater goods]", and one figure has been given for "Residents Balconies". These figures need to be reduced in respect of each block. To do this, the Tribunal has utilised two (unchallenged) tables provided by Aster during the hearing which give a further breakdown of costs within these two categories.

164. Following the hearing the parties were given the opportunity to make mathematical submissions as to the cost savings if the Respondents' case was accepted. These submissions have been considered by the Tribunal. However we treat the parties' calculations with caution, as they are largely unsupported by any evidence, and Mr Pincott appears to have used the priced Specification, rather than the lesser sums actually demanded, as the basis for his calculations.
165. It must be borne in mind that the sums demanded on account are only estimates. Precision in calculation is neither necessary nor possible.

Calculation for the Main Blocks

Eaves and Rainwater Goods

166. In respect of each block the figure has been reduced by the sum attributable to the eaves goods, but leaving in the full sum attributable to rainwater goods. Mr Pincott conceded that an overall figure of £10,000.00 net should be added in for decoration work required if the overcladding was omitted, so the sum of £2,000.00 per block has been added.

Wing walls

167. The Tribunal has found that only the construction joint walls at first and second floor levels should be rebuilt. The Tribunal has calculated the number of wing walls at these levels for each block (counting a wing wall as two walls due to its double width).
168. The Tribunal's methodology, using Saxon as an example, is as follows:
- Aster's estimated cost of taking down the wing walls is £14,600.00, and its estimated cost of rebuilding the wing walls is £100,500.00, providing a total of £115,100.00.
 - Only 8 of the 38 wing walls (21%) should be taken down and rebuilt.
 - 21% of £115,100.00 = £24,171.00: the cost of those 8 wing walls.
 - £115,100.00 - £24,171.00 = £90,929.00: the remaining unallocated cost.
 - The remaining 32 walls, save those protected by the roof overhang, and the wing walls at upper ground level, should not be rebuilt but instead repaired, rendered, and coping added where required.
 - The experts agree that rendering and coping will cost less than rebuilding but cannot agree on the costs savings.
 - Using its knowledge and experience as an expert body, the Tribunal estimates that 50% of £90,929.00 i.e. £45,464.50 will be saved by utilising the rendering and coping option.
 - Thus the revised estimated cost of the work to the wing walls is £24,171.00 + £45,464.50 = **£69,635.50**, in place of £115,100.00.

169. We emphasise that these figures are estimates only, which are all that is required in respect of on account demands. Our estimate of 50% savings for those walls not being rebuilt is broadly in line with the parties' calculations. The most recent calculation submitted by Mr Pincott for the option of rendering all (and rebuilding none) of the wing walls across all the main blocks (which accepted that his original cost estimate for the rendering option was too low) produced suggested net savings of c. £175,000.00 which against Aster's original estimated net cost of £355,660 represents 49% savings. Mr Potschynok's suggested net savings figure was c. £149,000.00 which represents 42% savings.

Balcony asphalt

170. Aster has provided a figure for its estimated cost of new balcony waterproofing for each block. This cost was based on completely replacing the balcony asphalt. The Tribunal has found that the existing asphalt should be repaired and overcoated. The experts agree that this will reduce the cost, but they disagree as to the amount that would be saved. As against the original estimated net cost of £299,400.00. Mr Pincott originally suggested savings of c £162,600.00 (but this was against the priced Specification not the amount actually demanded) and Mr Potchynok suggested savings of c £95,000.00.
171. Again the Tribunal uses its own expertise to arrive at an estimate that the overcoating option will cost 45% of the original estimated cost. Thus the balcony waterproofing costs have been reduced by 55%. Taking Saxon as an example the original estimate of £145,500.00 has been reduced to **£65,475.00**.
172. Our view that overcoating is a significantly cheaper option is supported by the undisputed estimated cost of overcoating the front walkways at Atholl of just £2,650.10.
173. The total allowed for "Residents Balconies" cost in the block cost breakdowns is therefore made up of the estimated costs allowed for the wing walls and balcony asphalt. In the case of Saxon the total is **£135,110.50**, made up of **£69,635.50 + £65,475.00**.
174. Exactly the same methodology has been applied for each of the main blocks to produce revised figures in the block cost breakdowns for "Eaves and RWWG" and "Residents Balconies".

Calculation for Atholl

175. The calculation is straightforward. The figure in the block cost breakdown for Eaves and RWWG has been reduced in the same way as for the main blocks. In respect of Residents Balconies the cost has been reduced to Nil in accordance with our findings.

Recalculation of Preliminaries

176. Preliminaries were not put in issue at the hearing although they are a very significant cost. A simple breakdown of the preliminaries was provided by Aster. The Tribunal considers that some adjustment to the sum demanded on account for Preliminaries must be made in order to reflect the omission of work which the Tribunal finds to be unreasonable. In our expert view the fairest approach is to reduce the Preliminaries item in each of the block cost breakdowns by the same percentage as the net costs (excluding preliminaries) has been reduced. We again emphasize that at the on account stage this is simply a reasonable estimate.
177. To take Saxon as an example, the reduction in net costs as a result of our findings is 23%. This means that the Preliminaries figure of £191,975.40 has been reduced to £147,820.26.
178. Annexed to this Decision are the block cost breakdowns for each block as amended by the Tribunal.
179. The table below sets out the revised amounts recoverable from the lessees on account of major works in 2017-18.

	Original Demand (£) Per lessee	Amount payable (£) Per lessee
Saxon	29,916.46	23,005.76
Stuart	31,341.00	25,827.16
York	26,614.52	22,424.11
Tudor	32,938.86	26,037.71
Atholl	11,559.90	5,239.71

Section 20C

180. An application had originally been made for an order under section 20C of the Act, but Aster confirmed in its statement of case that it would not seek to recover its costs of the proceedings through the service charge. The Talbot Walker lessees then stated that their application for a section 20C order would not be pursued. Mrs Frost and Mrs Noble made their own separate section 20C applications, which were never formally withdrawn. A determination is therefore

required. Mrs Noble's application was expressed to be made for the benefit of "all other affected leaseholders", but as there is no evidence that she was requested or authorised by any other lessees we confine that application to Mrs Noble.

181. In deciding whether to make an order under section 20C a tribunal is not required to consider whether the lease permits recovery of legal costs. The Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Taking all the circumstances into account we make an order under section 20C that to such extent as they may otherwise be recoverable, Aster's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any future service charge payable by Mrs Frost and Mrs Noble. We do so for two principal reasons: (i) these Atholl lessees have succeeded to a material extent in reducing the amount of the on account service charge they are required to pay and (ii) Aster's stated intention not to seek recovery of those costs in any event.

Dated: 13 July 2018

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Saxon Court	Contract Sum	No of Flats	40					
	Contract Sum	VAT	Total	Per Flat	MGT Fee	Per Flat		
Temp connections	£25,385.00	£5,077.00	£30,462.00	£761.55	£3,807.75	£	95.19	
Eaves and	£55,236.02	£11,047.20	£66,283.22	£1,657.08	£8,285.40			
RWWG						£	207.14	
Patio Doors	£	£	£	£	£			
Concrete Repairs	£94,715.56	£18,943.11	£113,658.67	£2,841.47	£14,207.33	£	355.18	
Mastic Asphalt	£67,660.00	£13,532.00	£81,192.00	£2,029.80	£10,149.00	£	253.73	
Dividing Block	£8,000.00	£1,600.00	£9,600.00	£240.00	£1,200.00			
Walls						£	30.00	
Ballustrade Infills	£9,504.00	£1,900.80	£11,404.80	£285.12	£1,425.60	£	35.64	
Top Metal Rails	£11,360.00	£2,272.00	£13,632.00	£340.80	£1,704.00	£	42.60	
Brickwork Repairs	£8,795.00	£1,759.00	£10,554.00	£263.85	£1,319.25	£	32.98	
Residents		£27,022.10	£	£162,132.60	£4,053.32	£20,266.58		
Balconies	£	135,110.50				£	506.66	
Stairwell Roofs	£16,620.00	£3,324.00	£19,944.00	£498.60	£2,493.00	£	62.33	
Rain Screens	£500.00	£100.00	£600.00	£15.00	£75.00	£	1.88	
Stairwell Treads	£17,250.00	£3,450.00	£20,700.00	£517.50	£2,587.50	£	64.69	
Bin Store Doors	£21,255.77	£4,251.15	£25,506.92	£637.67	£3,188.37	£	79.71	
Decorations	£62,440.00	£12,488.00	£74,928.00	£1,873.20	£9,366.00	£	234.15	
Preliminaries	£147,820.37	£29,564.07	£177,384.44	£4,434.61	£22,173.06	£	554.33	
Summary Total	£681,652.22	£136,330.44	£818,022.66	£20,449.57	£102,247.83	£2,556.20	£23,005.76	

Stuart Court		No of Flats		24					
	Contract Sum	VAT	Total	Per Flat	MGT Fee				
Temp connections	£17,139.50	£3,427.90	£20,567.40	£856.98	£2,570.93	£	107.12		
Eaves and RWWG	£ 35,184.50	£7,036.90	£ 42,221.40	£1,759.23	£5,277.68	£	219.90		
Patio Doors	£ -	£ -	£ -	£ -	£ -	£			
Concrete Repairs	£76,338.12	£15,267.62	£91,605.74	£3,816.91	£11,450.72	£	477.11		
Mastic Asphalt	£56,798.00	£11,359.60	£68,157.60	£2,839.90	£8,519.70	£	354.99		
Dividing Block Walls	£7,500.00	£1,500.00	£9,000.00	£375.00	£1,125.00	£	46.88		
Ballustrade Infills	£5,000.00	£1,000.00	£6,000.00	£250.00	£750.00	£	31.25		
Top Metal Rails	£7,209.00	£1,441.80	£8,650.80	£360.45	£1,081.35	£	45.06		
Link Walkway	£13,572.00	£2,714.40	£16,286.40	£678.60	£2,035.80	£	84.83		
Brickwork Repairs	£18,295.00	£3,659.00	£21,954.00	£914.75	£2,744.25	£	114.34		
Residents Balconies	£ 73,024.50	£14,604.90	£ 87,629.40	£3,651.23	£10,953.68	£	456.40		
Stairwell Roofs	£8,379.99	£1,676.00	£10,055.99	£419.00	£1,257.00	£	52.38		
Link Walkway	£2,538.65	£507.73	£3,046.38	£126.93	£380.80	£	15.87		
Rain Screens	£4,800.00	£960.00	£5,760.00	£240.00	£720.00	£	30.00		
Stairwell Treads	£2,500.00	£500.00	£3,000.00	£125.00	£375.00	£	15.63		
Staircase	£17,494.50	£3,498.90	£20,993.40	£874.73	£2,624.18	£	109.34		
Ballustrading						£			
Bin Store Doors	£13,653.84	£2,730.77	£16,384.61	£682.69	£2,048.08	£	85.34		
Decorations	£36,932.00	£7,386.40	£44,318.40	£1,846.60	£5,539.80	£	230.83		
Preliminaries	£62,789.66	£12,557.93	£75,347.59	£3,139.48	£9,418.45	£	392.44		
Summary Total	£459,149.26	£91,829.85	£550,979.11	£22,957.47	£68,872.41	£ 2,869.68	£25,827.16		

York Court		32 Flats					
	Contract Sum	VAT	Total	Per Flat MGT Fee			
Temp connections	£20,706.00	£4,141.20	£24,847.20	£776.48	£3,105.90	£	97.06
Eaves and RWWG	£44,338.00	£8,867.60	£53,205.60	£1,662.68	£6,650.70	£	207.83
Patio Doors	£ -	£ -	£ -	£ -	£ -	£	
Concrete Repairs	£80,079.22	£16,015.84	£96,095.06	£3,002.97	£12,011.88	£	375.37
Mastic Asphalt	£70,250.00	£14,050.00	£84,300.00	£2,634.38	£10,537.50	£	329.30
Dividing Block Walls	£7,500.00	£1,500.00	£9,000.00	£281.25	£1,125.00	£	35.16
Ballustrade Infills	£7,603.00	£1,520.60	£9,123.60	£285.11	£1,140.45	£	35.64
Top Metal Rails	£9,088.00	£1,817.60	£10,905.60	£340.80	£1,363.20	£	42.60
Link Walkway	£8,572.00	£1,714.40	£10,286.40	£321.45	£1,285.80	£	40.18
Brickwork Repairs	£28,545.00	£5,709.00	£34,254.00	£1,070.44	£4,281.75	£	133.80
Residents Balconies	£56,519.50	£11,303.90	£67,823.40	£2,119.48	£8,477.93	£	264.94
Stairwell Roofs	£15,818.85	£3,163.77	£18,982.62	£593.21	£2,372.83	£	74.15
Rain Screens	£500.00	£100.00	£600.00	£18.75	£75.00	£	2.34
Staircase	£21,119.50	£4,223.90	£25,343.40	£791.98	£3,167.93	£	99.00
Ballustrading						£	
Bin Store Doors	£16,554.80	£3,310.96	£19,865.76	£620.81	£2,483.22	£	77.60
Decorations	£46,576.00	£9,315.20	£55,891.20	£1,746.60	£6,986.40	£	218.33
Preliminaries	£97,764.24	£19,552.85	£117,317.09	£3,666.16	£14,664.64	£	458.27
Summary Total	£531,534.11	£106,306.82	£637,840.93	£19,932.55	£79,730.12	£ 2,491.57	£22,424.11

Tudor Court	No of Flats		24					
	Contract Sum	VAT	Total	Per Flat	MGT Fee			
Temp connections	£17,539.50	£3,507.90	£21,047.40	£876.98	£2,630.93	£	109.62	
Eaves and RWWG	£21,054.50	£4,210.90	£25,265.40	£1,052.73	£3,158.18	£	131.59	
Patio Doors	£ -	£ -	£ -	£ -	£ -	£		
Concrete Repairs	£71,560.47	£14,312.09	£85,872.56	£3,578.02	£10,734.07	£	447.25	
Mastic Asphalt	£51,135.00	£10,227.00	£61,362.00	£2,556.75	£7,670.25	£	319.59	
Dividing Block Walls	£7,500.00	£1,500.00	£9,000.00	£375.00	£1,125.00	£	46.88	
Ballustrade Infills	£5,000.00	£1,000.00	£6,000.00	£250.00	£750.00	£	31.25	
Top Metal Rails	£7,209.00	£1,441.80	£8,650.80	£360.45	£1,081.35	£	45.06	
Link Walkway	£17,144.00	£3,428.80	£20,572.80	£857.20	£2,571.60	£	107.15	
Brickwork Repairs	£36,045.00	£7,209.00	£43,254.00	£1,802.25	£5,406.75	£	225.28	
Residents Balconies	£80,589.50	£16,117.90	£96,707.40	£4,029.48	£12,088.43	£	503.68	
Stairwell Roofs	£5,340.00	£1,068.00	£6,408.00	£267.00	£801.00	£	33.38	
Link Walkway	£9,425.27	£1,885.05	£11,310.32	£471.26	£1,413.79	£	58.91	
Rain Screens	£500.00	£100.00	£600.00	£25.00	£75.00	£	3.13	
Stairwell Treads	£1,875.00	£375.00	£2,250.00	£93.75	£281.25	£	11.72	
Staircase	£14,600.00	£2,920.00	£17,520.00	£730.00	£2,190.00	£	91.25	
Ballustrading						£		
Bin Store Doors	£13,365.00	£2,673.00	£16,038.00	£668.25	£2,004.75	£	83.53	
Decorations	£37,000.00	£7,400.00	£44,400.00	£1,850.00	£5,550.00	£	231.25	
Preliminaries	£66,010.35	£13,202.07	£79,212.42	£3,300.52	£9,901.55	£	412.56	
Summary Total	£462,892.59	£92,578.51	£555,471.10	£23,144.63	£69,433.89	£	2,893.08	£26,037.71

Atholl Court		No of Flats	40				
	Contract Sum	VAT	Total	Per Flat	MGT Fee	Per Flat	
Temp connections	£15,720.00	£3,144.00	£18,864.00	£471.60	£2,358.00	£ 58.95	
Eaves and	£24,757.30	£4,951.46	£29,708.76	£742.72	£3,713.60		
RWWG						£ 92.84	
Concrete Repairs	£36,750.00	£7,350.00	£44,100.00	£1,102.50	£5,512.50	£ 137.81	
Mastic Asphalt	£2,650.10	£530.02	£3,180.12	£79.50	£397.52	£ 9.94	
Dividing Block	£13,940.00	£2,788.00	£16,728.00	£418.20	£2,091.00		
Walls						£ 52.28	
Top Metal Rails	£2,500.00	£500.00	£3,000.00	£75.00	£375.00	£ 9.38	
Mastic Asphalt	£7,000.00	£1,400.00	£8,400.00	£210.00	£1,050.00	£ 26.25	
Residents	£0.00	£0.00	£0.00	£0.00	£0.00		
Balconies						£ -	
Bin Store Doors	£400.97	£80.19	£481.16	£12.03	£60.15	£ 1.50	
Decorations	£5,720.00	£1,144.00	£6,864.00	£171.60	£858.00	£ 21.45	
Preliminaries	£45,812.39	£9,162.48	£54,974.87	£1,374.37	£6,871.86	£ 171.80	
Summary Total	£155,250.76	£31,050.15	£186,300.91	£4,657.52	£23,287.62	£ 582.19	£5,239.71

Calculations

RRWG Remove eaves and add £2K back for decorations

Saxon	£90,353.99	£ 37,117.97	£53,236.02	£2,000	£55,236.02
Stuart	£56,715.07	£ 23,530.57	£33,184.50	£2,000	£35,184.50
York	£71,504.23	£ 29,166.23	£42,338.00	£2,000	£44,338.00
Tudor	£58,184.10	£ 39,129.60	£19,054.50	£2,000	£21,054.50
Atholl	£53,329.30	£ 30,572.00	£22,757.30	£2,000	£24,757.30

Balconies Water Proofing * 45%

Saxon	£ 145,500.00	£ 65,475.00
Stuart	£ 51,300.00	£ 23,085.00
York	£ 51,300.00	£ 23,085.00
Tudor	£ 51,300.00	£ 23,085.00
Atholl		

	Take down Walls	Rebuild		Rebuild	50%	Total	Total balcony		
Saxon	£ 14,600.00	£ 100,500.00	£ 115,100.00	£ 24,171.00	£ 45,464.50	£ 69,635.50	£ 135,110.50	38 walls	8 rebuild
Stuart	£ 20,500.00	£ 64,000.00	£ 84,500.00	£ 15,379.00	£ 34,560.50	£ 49,939.50	£ 73,024.50	22 walls	4 rebuild
York	£ 13,760.00	£ 45,000.00	£ 58,760.00	£ 8,109.00	£ 25,325.50	£ 33,434.50	£ 56,519.50	29 walls	4 rebuild
Tudor	£ 17,800.00	£ 79,500.00	£ 97,300.00	£ 17,709.00	£ 39,795.50	£ 57,504.50	£ 80,589.50	22 walls	4 rebuild
Atholl									

		Amount less Preliminaries (Demand)		Amount less Prelim (New)		New	Savings	% Savings /Amounts less Prelims Demand)		
Saxon	£ 886,413.72	£ 191,974.50	£ 694,439.22	£ 725,806.35	£ 191,974.50	£ 533,831.85	£ 160,607.37	23%	£191,974.50	£ 147,820.37
Stuart	£ 557,173.42	£ 76,572.75	£ 480,600.67	£ 472,932.35	£ 76,572.75	£ 396,359.60	£ 84,241.07	18%	£76,572.75	£ 62,789.66
York	£ 630,862.60	£ 116,386.00	£ 514,476.60	£ 550,155.87	£ 116,386.00	£ 433,769.87	£ 80,706.73	16%	£116,386.00	£ 97,764.24
Tudor	£ 585,579.74	£ 83,557.40	£ 502,022.34	£ 480,439.64	£ 83,557.40	£ 396,882.24	£ 105,140.10	21%	£ 83,557.40	£ 66,010.35
Atholl	£ 342,515.67	£ 101,805.30	£ 240,710.37	£ 211,243.67	£ 101,805.30	£ 109,438.37	£ 131,272.00	55%	£ 101,805.30	£ 45,812.39