DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 AND SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

Reference number:	LON/OOBA/LAC/2004/007
Property:	Ground floor flat, 80 Robinson Road, Colliers Wood, London SW17 9DP
Applicants:	Ms V Smith and Mr D Petrie (Tenants)
Respondent:	Abbeyladder Limited (Landlords)
Appearances:	The Applicants in person For the Respondent: Mr C Case of Ashbourne Estates Limited (Managing Agents)
Tribunal Members:	Mr A Andrew Miss M Krisko BSc (EstMan), BA, FRICS Mrs M Colville JP, LLB

Applications dated:	1st November 2004
Directions:	25th November 2004
Hearing:	14th January 2005
Decision:	16th February 2005

THE FACTS

1. On the basis of the documents produced to it and the submissions made at the hearing the Tribunal found the following facts: -
    a. 80 Robinson Road, Colliers Wood, London SW17 comprises two flats of which the Property is one. The Applicants hold the Property under a lease dated 7th May 1987 for a term of 99 years from 31st March 1987 ("the Lease"). The Lease reserves a ground rent of £75 per year for the first 33 years, £150 per year for the second 33 years and £300 per year for the last 33 years. The Respondent owns the reversionary freehold interest and is therefore the Applicants landlord. Their managing agents are Ashbourne Estates Limited.
    b. The Property has a shower and separate w/c but no bathroom. The Applicants decided to remove the shower and w/c and install a new bathroom. They obtained the written consent of the owner of the other flat, they had plans prepared and they obtained a written builders estimate in the sum of £5,598.
    c. On the 30th June 2004 the applicants wrote to the Managing Agents with copies of the plan and estimate. They explained that the works would involve the removal of an existing supporting wall and the insertion of a RSJ on padstones. They sought the Respondent's consent to the proposed works.
    d. The Managing Agents obtained their client's instructions and on 19th August 2004 they wrote to the Applicants informing them that the Respondent would grant consent to the proposed works subject to the following material terms: -
        i. That the Applicants enter into a deed varying the terms of the Lease by substituting a ground rent of £250 per year, doubling every 25 years, for that reserved by the Lease. The total rent currently payable for the unexpired residue of the term, from 31st March 2005, amounts to £15,975: if the ground rent were increased as suggested, from the commencement date, the total rent payable for the unexpired residue of the term would amount to £87,250.
        ii. That the Applicants pay the Managing Agents administration charge in the sum of £750. This was stated to include the Respondent's legal costs. Subsequent enquires made by the Applicants established that these costs were estimated at £528.75 inclusive of VAT and related to the preparation of a deed varying the ground rent reserved by the Lease. Thus the Managing Agents administration charge would amount to £221.25 inclusive of VAT.
        iii. That the Applicants pay the Respondent's surveyors fees in the sum of £1,000 plus VAT.
        iv. The consent was also to be subject to pre-printed conditions and regulations that are not material to the application before the Tribunal save that they included a provision that the Applicants would pay the Respondent's solicitors costs incurred in the granting of any consent.

e. The Applicants considered these terms unreasonable and on 11th September 2004 they invited the Respondent, through the Managing Agent, to negotiate them. The Respondent declined the invitation and thus the Applicants applied to the Tribunal for a determination of the payability of an administration charge pursuant to paragraph 5 of Schedule 11 of the Commonhold and Leasehold reform Act 2002 ("the 2002 Act"). The Applicants also applied, under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"), for an order limiting the recovery, through the Service Charge, of the Respondent's costs incurred in these proceedings. Directions issued on 25th November 2004 authorised the Tribunal to consider requiring the Respondent to reimburse the Applicants with the whole or part of their fees incurred in making their applications.

RELEVANT CONTRACTUAL AND STATUTROY PROVISIONS

2. Sub-clause 2(10) of the Lease contains a tenant's covenant in the following terms: -
"Not to cut maim or injure any of the ceiling floors walls or partitions of the flat nor to make any alterations in the flat without first obtaining the consent in writing of the Landlord such consent not to be unreasonably withheld in the case of internal alterations of a non-structural nature".

3. Sub-section 19(2) of the Landlord and Tenant Act 1927 ("the 1927 Act") provides that where a tenant's covenant provides that improvements are not to be undertaken without the landlord's licence or consent the provision *"shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not be unreasonably withheld"*. The Sub-section further provides that such deemed proviso shall *"not preclude the right to require as a condition of such licence or consent the payment of.... any legal or other expenses properly incurred in connection with such licence or consent"*.

4. An administration charge is defined in Sub-paragraph 1(1) of Part 1 of Schedule 11 of the 2002 Act. The relevant provisions read as follows: -
"In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals".

5. Sub-paragraph 1(3) defines a variable administration charge as *"an administration charge payable by a tenant which is neither-*
(a) specified in his lease, nor
(b) calculated in a formula specified in his lease".

6. Paragraph 2 of the 2002 Act provides that *"A variable administration charge is payable only to the extent that the amount of the charge is reasonable".*

DECISION

Administration charge

7. There was some doubt as to whether the proposed works were of a structural nature. At the pre-trial review the Applicants had conceded that they were and Mr Case, on behalf of the Respondent, agreed with that assessment which appeared to be supported by the builder's estimate. However the plans produced to the Tribunal indicated that the wall that would have to be removed, as part of the works, was not load bearing and if that were right the works could well be regarded as being of a *"non-structural nature"*. The Tribunal could reach no definite conclusion on the issue. It was however self-evident, as Mr Case conceded, that the proposed works amounted to an improvement.

8. Sub-section 19(2) the 1927 Act applies to covenants restricting alterations where the proposed alterations are in the nature of improvements. In written submissions the Managing Agents had suggested that the Sub-section does not apply to an absolute prohibition. That is plainly wrong: the sub-section clearly applies to an absolute prohibition although it appears not to apply to a qualified prohibition where the position would be governed by the terms of the lease. If the works were structural in nature then the provisions of Sub-section 19(2) the 1927 Act would apply: the Respondent could not unreasonably withhold its consent to the proposed works but could, as a condition of such consent, require the payment of any legal or other expenses properly incurred in connection with such consent.

9. If the works were non-structural in nature then the provisions of Sub-clause 2(10) of the Lease would apply and the Respondent could not unreasonably withhold its consent to the proposed works. Although there is no express provision in the Lease which requires the Applicants to pay the Respondent's reasonable costs incurred in the granting of such consent it would nevertheless be reasonable for the Respondent, as a condition of granting consent, to require the Applicants to pay those costs.

10. The definition of an administration charge is extremely wide. It covers both direct and indirect payments. Consequently it encompasses not only payments demanded under the proviso deemed to be incorporated in the Lease by virtue of Sub-section 19(2) of the 1927 Act but also payments reasonably demanded as a condition of granting a consent or approval where such consent or approval cannot be unreasonably withheld. As the increased ground rent was being demanded as a condition of granting consent to the proposed works that too was caught by the definition which, in any event, specifically referred to sums that were payable *"as part of... the rent"*. Furthermore, applying a purposive interpretation to Schedule 11 of the 2002 Act, it was clearly intended to provide protection to tenants in situations such as those in which the Applicants now found themselves. For each of these reasons the Tribunal concluded that the sums being demanded fell within the definition of an administration charge.

11. Equally it was clear that the sums being demanded amounted to a variable administration charge in that they were neither specified in the Lease nor were they calculated in accordance with a formula specified in the unvaried Lease. Consequently the sums being demanded were only payable to the extent that they were reasonable. Although the 2002 Act offers no practical guidance, on applying the test of reasonableness, the Tribunal considered that administration charges would only be reasonable to the extent that they reimbursed the landlord with its costs reasonably and properly incurred in considering a tenant's application and, where appropriate, in granting the relevant consent or approval.

12. Turning to the sums under consideration Mr Case defended the proposed ground rent on the basis that the Respondent was simply proposing to increase the ground rent to a level that it would expect to achieve if the Lease were granted now rather than in 1987. The Tribunal considered that to be an irrelevant consideration: the Respondent was attempting to secure a substantial financial advantage by withholding a consent that could not, one way or the other, be unreasonably withheld. Applying the test formulated in the previous paragraph the Tribunal had no hesitation in concluding that the increased ground rent proposed by the Respondent amounted to an unreasonable administration charge. It followed from that determination that the solicitors' costs for preparing a deed varying the ground rent, estimated at £528.75 inclusive of VAT, were equally unreasonable although, as will be seen, the Respondent would be entitled to recover its cost relating to the grant of a licence to alter.

13. The Managing Agents would incur costs in processing the application. Although their work would be purely administrative in nature their proposed costs of £221.25 inclusive of VAT did not strike the Tribunal as inherently unreasonable and it would not disturb them.

14. Mr Case said that the surveyor would probably have to spend in excess of 8 hours in considering the documents and in inspecting the Property both before and after the completion of the works. The surveyor's hourly rate was £125 and thus the total fee was estimated at £1,000 plus VAT. The Applicants had suggested that a fee of £300 to £400 would be reasonable. Taking into account these submissions and relying upon its own experience (which included that of an experienced surveyor) the Tribunal considered that the time estimate of 8 hours was wholly excessive. The proposed works were straightforward and it had taken the Tribunal only a few minutes to read the supporting documents. Even allowing the surveyor a degree of tolerance the Tribunal did not consider that more than 3 hours work was involved: half an hour for receiving instructions and reading the relevant documents, one hour for each of the inspections and half an hour for reporting to the client and associated correspondence. It therefore considered that a reasonable fee for the surveyor's costs would be £375 plus VAT: £440.63 inclusive of VAT.

15. Finally there would be solicitors costs incurred in drafting and completing a licence to alter. Neither party had addressed those costs directly presumably

on the apparently erroneous assumption that they would be encompassed within the costs to be incurred in connection with the preparation of a deed of variation. In general terms a licence to alter would take as long to prepare and complete as a deed varying the ground rent. On the basis of the Tribunal's experience (which included that of an experienced solicitor) the proposed fee of £450 plus VAT was consistent with current market rates for work of that nature. The Tribunal therefore considered that a reasonable fee for the legal costs would be £528.75 inclusive of VAT.

16. For the avoidance of any doubt and for the reasons set out in the following section of this decision the Tribunal considered that if the Respondent were to attempt to recover its costs incurred in these proceedings as a condition of granting consent to the proposed works such costs would in themselves amount to an unreasonable administration charge.

Section 20C application and fees

17. The Lease did not provide for payment of a service charge and there was no obvious provision in the Lease which would entitle the Respondent to recover its costs incurred in the proceedings before the Tribunal. However in the event that another forum might reach a different conclusion the Tribunal would nevertheless consider whether it would be appropriate to make an order.

18. To the extent that costs might be recovered the right to recover them was a property right that should not lightly be disregarded. Section 20C of the 1985 Act however provides that the Tribunal may *"make such order on the application as it considers just and equitable in the circumstances"*. The Tribunal considered that these words permitted it to take into account the conduct of the parties in deciding whether to make an order.

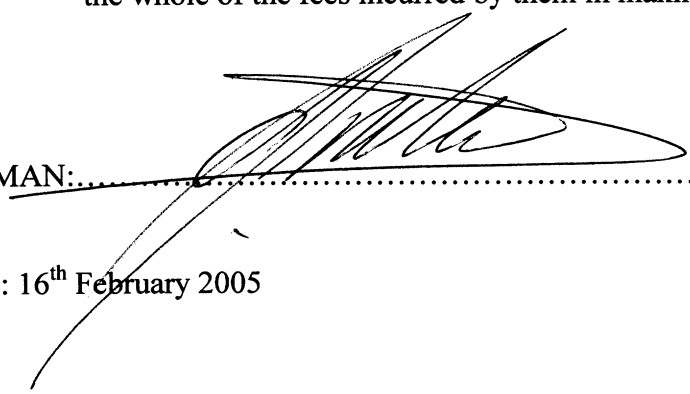
19. The Applicants had made a perfectly reasonable application for consent to carry out a very basic improvement to their flat: indeed it was an improvement that many would consider essential in a modern habitable dwelling. For the reasons explained in this decision the Respondent could not unreasonably withhold its consent to the proposed works and yet it had sought to make its consent conditional upon the payment by the Applicants of an administration charge which the Tribunal considered to be wholly unreasonable: namely the payment of a substantially increased ground rent. In doing so it seemed to the Tribunal that the Respondent had sought to gain an unfair advantage and it considered that it would be wholy unjust and inequitable if it were able to recover, from the Applicants, their costs incurred in the proceedings before the Tribunal. The Tribunal would therefore make the order sought.

20. For similar reasons the Tribunal would order that the Respondent to repay to the Applicants the whole of their fees incurred in making their applications: that is £250.

CONCLUSIONS

21. The Tribunal determined that an administration charge of £1,190.63 inclusive of VAT is payable by the Applicants to the Respondent or their Managing Agents in connection with their application for consent to the proposed works. It would be payable upon production of the appropriate receipted invoices although the Respondent would be entitled to require security for payment of their costs prior to a formal consideration of the application.

22. The Tribunal ordered that: -
    a. The Respondent should not be entitled to recover its costs incurred in these proceedings, from the Applicants, through the service charge.
    b. The Respondent should pay to the Applicants the sum of £250 being the whole of the fees incurred by them in making their applications.



CHAIRMAN:.....(A J Andrew)

DATED: 16th February 2005

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 AND SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

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Applications dated:	1st November 2004
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THE FACTS

1. On the basis of the documents produced to it and the submissions made at the hearing the Tribunal found the following facts: -
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    b. The Property has a shower and separate w/c but no bathroom. The Applicants decided to remove the shower and w/c and install a new bathroom. They obtained the written consent of the owner of the other flat, they had plans prepared and they obtained a written builders estimate in the sum of £5,598.
    c. On the 30th June 2004 the applicants wrote to the Managing Agents with copies of the plan and estimate. They explained that the works would involve the removal of an existing supporting wall and the insertion of a RSJ on padstones. They sought the Respondent's consent to the proposed works.
    d. The Managing Agents obtained their client's instructions and on 19th August 2004 they wrote to the Applicants informing them that the Respondent would grant consent to the proposed works subject to the following material terms: -
        i. That the Applicants enter into a deed varying the terms of the Lease by substituting a ground rent of £250 per year, doubling every 25 years, for that reserved by the Lease. The total rent currently payable for the unexpired residue of the term, from 31st March 2005, amounts to £15,975: if the ground rent were increased as suggested, from the commencement date, the total rent payable for the unexpired residue of the term would amount to £87,250.
        ii. That the Applicants pay the Managing Agents administration charge in the sum of £750. This was stated to include the Respondent's legal costs. Subsequent enquires made by the Applicants established that these costs were estimated at £528.75 inclusive of VAT and related to the preparation of a deed varying the ground rent reserved by the Lease. Thus the Managing Agents administration charge would amount to £221.25 inclusive of VAT.
        iii. That the Applicants pay the Respondent's surveyors fees in the sum of £1,000 plus VAT.
        iv. The consent was also to be subject to pre-printed conditions and regulations that are not material to the application before the Tribunal save that they included a provision that the Applicants would pay the Respondent's solicitors costs incurred in the granting of any consent.

e. The Applicants considered these terms unreasonable and on 11th September 2004 they invited the Respondent, through the Managing Agent, to negotiate them. The Respondent declined the invitation and thus the Applicants applied to the Tribunal for a determination of the payability of an administration charge pursuant to paragraph 5 of Schedule 11 of the Commonhold and Leasehold reform Act 2002 ("the 2002 Act"). The Applicants also applied, under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"), for an order limiting the recovery, through the Service Charge, of the Respondent's costs incurred in these proceedings. Directions issued on 25th November 2004 authorised the Tribunal to consider requiring the Respondent to reimburse the Applicants with the whole or part of their fees incurred in making their applications.

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3. Sub-section 19(2) of the Landlord and Tenant Act 1927 ("the 1927 Act") provides that where a tenant's covenant provides that improvements are not to be undertaken without the landlord's licence or consent the provision *"shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not be unreasonably withheld"*. The Sub-section further provides that such deemed proviso shall *"not preclude the right to require as a condition of such licence or consent the payment of.... any legal or other expenses properly incurred in connection with such licence or consent".*

4. An administration charge is defined in Sub-paragraph 1(1) of Part 1 of Schedule 11 of the 2002 Act. The relevant provisions read as follows: -
"In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals".

5. Sub-paragraph 1(3) defines a variable administration charge as *"an administration charge payable by a tenant which is neither-*
(a) specified in his lease, nor
(b) calculated in a formula specified in his lease".

6. Paragraph 2 of the 2002 Act provides that *"A variable administration charge is payable only to the extent that the amount of the charge is reasonable".*

DECISION

Administration charge

7. There was some doubt as to whether the proposed works were of a structural nature. At the pre-trial review the Applicants had conceded that they were and Mr Case, on behalf of the Respondent, agreed with that assessment which appeared to be supported by the builder's estimate. However the plans produced to the Tribunal indicated that the wall that would have to be removed, as part of the works, was not load bearing and if that were right the works could well be regarded as being of a *"non-structural nature"*. The Tribunal could reach no definite conclusion on the issue. It was however self-evident, as Mr Case conceded, that the proposed works amounted to an improvement.

8. Sub-section 19(2) the 1927 Act applies to covenants restricting alterations where the proposed alterations are in the nature of improvements. In written submissions the Managing Agents had suggested that the Sub-section does not apply to an absolute prohibition. That is plainly wrong: the sub-section clearly applies to an absolute prohibition although it appears not to apply to a qualified prohibition where the position would be governed by the terms of the lease. If the works were structural in nature then the provisions of Sub-section 19(2) the 1927 Act would apply: the Respondent could not unreasonably withhold its consent to the proposed works but could, as a condition of such consent, require the payment of any legal or other expenses properly incurred in connection with such consent.

9. If the works were non-structural in nature then the provisions of Sub-clause 2(10) of the Lease would apply and the Respondent could not unreasonably withhold its consent to the proposed works. Although there is no express provision in the Lease which requires the Applicants to pay the Respondent's reasonable costs incurred in the granting of such consent it would nevertheless be reasonable for the Respondent, as a condition of granting consent, to require the Applicants to pay those costs.

10. The definition of an administration charge is extremely wide. It covers both direct and indirect payments. Consequently it encompasses not only payments demanded under the proviso deemed to be incorporated in the Lease by virtue of Sub-section 19(2) of the 1927 Act but also payments reasonably demanded as a condition of granting a consent or approval where such consent or approval cannot be unreasonably withheld. As the increased ground rent was being demanded as a condition of granting consent to the proposed works that too was caught by the definition which, in any event, specifically referred to sums that were payable *"as part of... the rent"*. Furthermore, applying a purposive interpretation to Schedule 11 of the 2002 Act, it was clearly intended to provide protection to tenants in situations such as those in which the Applicants now found themselves. For each of these reasons the Tribunal concluded that the sums being demanded fell within the definition of an administration charge.

11. Equally it was clear that the sums being demanded amounted to a variable administration charge in that they were neither specified in the Lease nor were they calculated in accordance with a formula specified in the unvaried Lease. Consequently the sums being demanded were only payable to the extent that they were reasonable. Although the 2002 Act offers no practical guidance, on applying the test of reasonableness, the Tribunal considered that administration charges would only be reasonable to the extent that they reimbursed the landlord with its costs reasonably and properly incurred in considering a tenant's application and, where appropriate, in granting the relevant consent or approval.

12. Turning to the sums under consideration Mr Case defended the proposed ground rent on the basis that the Respondent was simply proposing to increase the ground rent to a level that it would expect to achieve if the Lease were granted now rather than in 1987. The Tribunal considered that to be an irrelevant consideration: the Respondent was attempting to secure a substantial financial advantage by withholding a consent that could not, one way or the other, be unreasonably withheld. Applying the test formulated in the previous paragraph the Tribunal had no hesitation in concluding that the increased ground rent proposed by the Respondent amounted to an unreasonable administration charge. It followed from that determination that the solicitors' costs for preparing a deed varying the ground rent, estimated at £528.75 inclusive of VAT, were equally unreasonable although, as will be seen, the Respondent would be entitled to recover its cost relating to the grant of a licence to alter.

13. The Managing Agents would incur costs in processing the application. Although their work would be purely administrative in nature their proposed costs of £221.25 inclusive of VAT did not strike the Tribunal as inherently unreasonable and it would not disturb them.

14. Mr Case said that the surveyor would probably have to spend in excess of 8 hours in considering the documents and in inspecting the Property both before and after the completion of the works. The surveyor's hourly rate was £125 and thus the total fee was estimated at £1,000 plus VAT. The Applicants had suggested that a fee of £300 to £400 would be reasonable. Taking into account these submissions and relying upon its own experience (which included that of an experienced surveyor) the Tribunal considered that the time estimate of 8 hours was wholly excessive. The proposed works were straightforward and it had taken the Tribunal only a few minutes to read the supporting documents. Even allowing the surveyor a degree of tolerance the Tribunal did not consider that more than 3 hours work was involved: half an hour for receiving instructions and reading the relevant documents, one hour for each of the inspections and half an hour for reporting to the client and associated correspondence. It therefore considered that a reasonable fee for the surveyor's costs would be £375 plus VAT: £440.63 inclusive of VAT.

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16. For the avoidance of any doubt and for the reasons set out in the following section of this decision the Tribunal considered that if the Respondent were to attempt to recover its costs incurred in these proceedings as a condition of granting consent to the proposed works such costs would in themselves amount to an unreasonable administration charge.

Section 20C application and fees

17. The Lease did not provide for payment of a service charge and there was no obvious provision in the Lease which would entitle the Respondent to recover its costs incurred in the proceedings before the Tribunal. However in the event that another forum might reach a different conclusion the Tribunal would nevertheless consider whether it would be appropriate to make an order.

18. To the extent that costs might be recovered the right to recover them was a property right that should not lightly be disregarded. Section 20C of the 1985 Act however provides that the Tribunal may *"make such order on the application as it considers just and equitable in the circumstances"*. The Tribunal considered that these words permitted it to take into account the conduct of the parties in deciding whether to make an order.

19. The Applicants had made a perfectly reasonable application for consent to carry out a very basic improvement to their flat: indeed it was an improvement that many would consider essential in a modern habitable dwelling. For the reasons explained in this decision the Respondent could not unreasonably withhold its consent to the proposed works and yet it had sought to make its consent conditional upon the payment by the Applicants of an administration charge which the Tribunal considered to be wholly unreasonable: namely the payment of a substantially increased ground rent. In doing so it seemed to the Tribunal that the Respondent had sought to gain an unfair advantage and it considered that it would be wholy unjust and inequitable if it were able to recover, from the Applicants, their costs incurred in the proceedings before the Tribunal. The Tribunal would therefore make the order sought.

20. For similar reasons the Tribunal would order that the Respondent to repay to the Applicants the whole of their fees incurred in making their applications: that is £250.

CONCLUSIONS

21. The Tribunal determined that an administration charge of £1,190.63 inclusive of VAT is payable by the Applicants to the Respondent or their Managing Agents in connection with their application for consent to the proposed works. It would be payable upon production of the appropriate receipted invoices although the Respondent would be entitled to require security for payment of their costs prior to a formal consideration of the application.

22. The Tribunal ordered that: -
    a. The Respondent should not be entitled to recover its costs incurred in these proceedings, from the Applicants, through the service charge.
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CHAIRMAN:.....(A J Andrew)

DATED: 16th February 2005