LON/00AC/NSI/2003/0061

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 19(2A) OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED

Applicant: SENTINEL SQUARE MANAGEMENT LTD

Respondents: VERONIQUE NEAD (Flat 26)
ZVI SOLOMANS (Flat 7)
IRIT MEYER (Flat 29)
JENNY & JILL LEVY (Flat 14)
BOAZ GORAN (Flat 19)
HH MARKS (Flat 30)

Re: SENTINEL HOUSE, SENTINEL SQUARE, BRENT ST, NW4 2EN

Hearing date: 2nd & 3rd February 2004

Members of the Tribunal:

Mr AJ Andrew LLB
Mr FL Coffey FRICS
Mr ON Miller BSc

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SENTINEL HOUSE, SENTINEL SQUARE, BRENT STREET, LONDON NW4 2EN

BACKGROUND

1. This was an application by Sentinel Square Management Limited ("the Applicant") under Sections 19(2A) and 19(2B) of the Landlord and Tenant Act 1985 ("the Act"). The Landlord sought determinations as to the reasonableness of costs actually incurred and of costs that it proposed to incur. The Respondents were the lessees of flats 7, 14, 19, 26 and 29 Sentinel House, Sentinel Square, Brent Street, London NW4 2EN ("the Respondents").

2. Sentinel Square is an early 1970's development which comprises a number of retail shops, offices, a supermarket, a multi-storey car park and residential flats. The buildings, comprising the development, surround a pedestrian forecourt which leads to Brent Street. To the north of the forecourt one building (defined in the Lease and described in this decision as "the Main Building") comprises 7 shops at ground floor level, offices at first floor level (although some of the offices have subsequently been converted into residential flats) and Sentinel House, a block of 32 flats rising above the development and situated on the 2nd to 9th floors. The ground floor shops and first floor offices extend, to the east and west, beyond the walls of Sentinel House. The roofs of these extensions can be accessed from Sentinel House and provide an amenity area for the residential lessees ("the Amenity Areas").

3. The flats in Sentinel House were all sold on long residential leases. Subsequently, in the early 1990's, the commercial units were sold on long leases at peppercorn or nominal ground rents and the freehold interest in Sentinel Square was vested in the Landlords, a company the shareholders of which are the lessees of the commercial units.

4. The Tribunal had before it a copy of the lease of flat 29 Sentinel House ("the Lease") and it understood that the leases of all the flats in Sentinel House were

in a similar form. Given the nature of the issues in dispute it is only necessary to consider the service charge provisions of the Lease. The Lessees' covenants for payment of the service charge are to be found in Clauses 2, 3 and 4 of the Sixth Schedule.

5. Clause 2 requires the Lessee to pay to the Lessor:
"such sum of money (hereinafter called "the Service Charge") as shall be equal to one thirty second part (that is 3.125 per cent) of the costs expenses outgoings and matters set out in the Ninth Schedule hereto the amount of which Service Charge shall be ascertained in accordance with the provisions of the said Schedule on the Twenty-fifth day of March in each year or such other date as the Lessor may from time to time reasonably determine".

6. Clause 3 gives the Lessor a wide discretion to adjust the Lessees liability under Clause 2 if "in the reasonable opinion of the Lessor the Lessee's liability for the Service Charge in respect of all or any of the Lessee's services shall be inequitable...".

7. Clause 4 requires the Lessee to make interim payments on account of the Service Charge by half yearly payments on the Twenty-fifth day of March and the Twenty-ninth day of September in each year of the Term.

8. Consequently, to ascertain the amount of the Service Charge one must have regard to the provisions of the Ninth Schedule. That Schedule, amongst other things, sets out a list of costs and expenses relating to the Main Building. They include: -

    a. the cost and expense of maintaining and repairing the exterior and structure of the Main Building;
    b. the reasonable cost of management and supervision of the services provided for all parts of the Main Building;
    c. miscellaneous expenses in connection with the management of the Main Building;

d. the cost of "any other services provided by the Lessor from time to time and not expressly mentioned herein".

The Ninth Schedule also enables the Lessor to levy an additional charge in respect of any "heavy or exceptional expenditure".

9. The inescapable consequence of these provisions is that the 32 Lessees of Sentinel House pay for all the costs incurred by the Lessors in the maintenance and repair of the Main Building whilst the Lessees of the commercial units of the Main Building contribute nothing. Notwithstanding that the Lessees of Sentinel House are not required to contribute to the cost of lighting and maintaining the forecourt the arrangement is clearly inequitable and yet the Lessees presumably took their leases with the benefit of legal advice obtained at the time of their respective purchases.

10. The Applicant had issued various service charge demands in respect of the service charge years 2001/2002 and 2002/2003. The Respondents had declined to pay all the sums demanded and the Applicant had issued proceedings for the unpaid service charges in various County Courts. The Respondents had defended the proceedings on the grounds that all or part of the sums claimed related either to costs which had not been reasonably incurred or to costs which, if incurred, would not be reasonable. By consent the issues relating to the reasonableness of the costs in dispute had been transferred to the Tribunal pursuant to Section 31C of the Act. It was common ground between the parties that all the proceedings had been transferred prior to 30th September 2003 and that consequently the Tribunal did not have jurisdiction to determine the issues in dispute under Section 27A of the Act which was introduced by the Commonhold and Leasehold Reform Act 2002. Its jurisdiction therefore rested on Section 19 of the Act in its unamended form.

11. A pre-trial review was held before a differently constituted tribunal on 3rd September 2003. Amongst other things, the directions required the parties to agree a bundle of documents which was to be lodged with the Tribunal by the Applicant. The Tribunal was authorised to consider requiring the Respondents

to reimburse the Applicant with the whole or part of its fees incurred in making the application. Either prior to or at the pre-trial review the Respondents had applied for an order under Section 20(C) of the Act to limit the recoverability of the cost of these proceedings through the service charge. With one exception, referred to below, the directions had in the main been complied with.

THE ISSUES

12. The Respondents' statement served pursuant to the directions had identified three issues which were in dispute. These can be summarised as follows: -

    a. The cost of concrete repairs which had been carried out to Sentinel House; and
    b. The estimated cost of resurfacing the Amenity Areas; and
    c. The costs incurred in the cleaning of the common parts of the Main Building during the service charge years 2001/2002 and 2002/2003.

13. In addition to the above the Applicant had put in issue the estimated cost of lift repairs and improvements.

14. At the commencement of the hearing the Tribunal, at the request of the parties, granted a short adjournment to allow negotiations to continue. The parties reached agreement on four of the five issues in dispute. The Tribunal heard no evidence relating to the issues agreed and made no determination upon them. The document recording the agreement, reached between the parties, was theirs and a copy is annexed to this decision for the sake of completeness only.

CONCRETE REPAIRS

15. This left outstanding only one issue: that relating to the cost of the concrete repairs. Between each floor, a concrete band encircles, Sentinel House. These bands were the subject of the repairs the cost of which was in dispute. Set out

in the following sub-paragraphs is a chronology of the undisputed facts relating to the repairs: -

a. In early April 1998 spalling of the concrete bands was noted. Maunder Taylor, the Applicants' Managing Agents, instructed Donald Halstead Associate ("DHA"), consulting engineers, to inspect and report back. DHA reported on 8th April 1998, recommending a full survey to be conducted by abseiling. On 21st April 1998 the London Borough of Barnet served a dangerous structure notice. On 1st May 1998 Maunder Taylor served notices under Section 20 of the Act in respect of the proposed survey costs which were estimated at £8,227.35.

b. At some time before January 2000, it was not clear when, urgent remedial repairs were carried out to comply with the dangerous structure notice: certainly on 26th January 2000 Barnet confirmed compliance with the dangerous structure notice. The costs of those works were not apparently in issue.

c. In May 1999, presumably following receipt of the survey report, DHA prepared a Specification of Work. At least two firms were invited to tender for the work. Their estimates were received in about July 1999 and on 15th September 1999 DHA reported on the estimates received. They advised Maunder Taylor that although Concrete Repairs Limited had submitted an estimate in the sum of £73,709.91 they had reduced some of the provisional quantities: if they were restored their estimate would be adjusted to £78,328.68.

d. On 13th January 2000 Maunder Taylor served a further Notice under Section 20 of the Act. It stated that the following estimates had been received: -

    i. Concrete Repairs Limited in the sum of £78.328.68 plus VAT; and

    ii. Westcrete Limited in the sum of £74,407.88 plus VAT.

    The notice made clear that to these sums should be added Surveyors fees of 12½ % of the net contract price together with VAT on the total cost of the works and fees. The notice recommended that the contract be awarded to Westcrete Limited. The notice requested observations

by 16th February 2000 but, at the request of the Residents Association, this date was deferred first to 31st March 2000 and then to 14th April 2000.

e. The Residents Association instructed their own Surveyors, Donaldsons, who reported on 11th April 2000. They concluded that the estimated costs represented "realistic value". On 14th April 2000 Rabbi Solomons wrote to Maunder Taylor, on behalf of the Residents' Association, authorising them "to go ahead with the works".

f. No instructions were given to commence the work and by letter dated 27th September 2000 Westcrete Limited notified Maunder Taylor that their estimated price would be subject to labour and material price increases which were likely to increase the cost by approximately 7%: in addition their scaffold sub-contractors were no longer prepared to hold their original price. They said that the earliest commencement date would be the week commencing 30th October 2000.

g. By letter of 17th November 2000 Concrete Repairs Limited, in answer to an enquiry from DHA, said that they stood by their estimate of £73,709.91 (see above).

h. Instructions were still not given to start the work and towards the end of 2000 the Residents Association obtained their own estimate from Conquest Garages. By a letter of 18th December 2000 they quoted the sum of £55,224.04 to undertake the work detailed in the Specification. They proposed however to complete the work by abseiling rather than from scaffolding. Maunder Taylor had reservations about this method of work believing that it would not comply with the Health and Safety regulations.

i. In about July 2001 four firms were requested to re-tender for the work. On 14th August 2001 Maunder Taylor issued a further Notice under Section 20 of the Act. It stated that the following estimates had been received: -

i.	Conquest Garages Limited	£170,084.23
ii.	Westcrete Limited	£90,236.24
iii.	Concrete Repairs Limited	£87,225.79
iv.	ACS (2000) Limited	£83,124.47

All sums were said to be exclusive of VAT and as before, the notice made clear that to these sums should be added Surveyors fees of 12½ % plus VAT of the net contract price. ACS (2000) Limited subsequently withdrew leaving Concrete Repairs Limited as the preferred contractor.

j. In a covering letter Maunder Taylor said that after taking account of fees already paid to DHA a further £113,119.67 would eventually become payable against which they held the sum of £97,119. No notices were served under Section 20 of the Act after that served on 14th August 2001.

k. Despite the re-tender and service of fresh Section 20 Notices, instructions were still not given for the commencement of the works. In response to a request from DHA, Concrete Repairs Limited, by letter of 25th April 2002 revised their price and offered two options: -

   i. A price of £103,560.79 based on a 13 week contract commencing on 15th June 2002;

   or

   ii. A price of £104,622.72 based on a 14 week contract commencing on 3rd March 2003.

l. The second option was accepted but the commencement date of the works was brought forward to 13th January 2003. The certificate of Practical Completion was issued by DHA on 16th April 2003 with the Defects Liability Period ending on 16th July 2003. During the course of the work the cost increased to £106,686.36 exclusive of VAT and surveyors fees. The increase, which was authorised by DHA, resulted in the main from additional repairs that were found to be necessary: in particular to the recessed brickwork course and the parapet.

INSPECTION

16. The Tribunal inspected Sentinel Square on the morning of 2nd February 2004. At the Time of its inspection the Tribunal did no know that four of the five

issues in dispute would be resolved later in the day and it carried out a thorough inspection of the Main Building, including Sentinel House.

17. It was apparent from the inspection that the concrete banding was intact, that it was not spalling and that it had recently been painted. However in other respects, as far the concrete banding was concerned, the inspection did not assist the Tribunal. It was impossible from the inspection to gauge the nature or extent of the works that had been carried out.

HEARING

18. The hearing took place during the afternoon of the 2nd February 2004 and continued during the following day. Mr B R Maunder Taylor FRICS, MAE represented the Applicant who otherwise did not attend. All the Respondents attended save that Mr L Nead attended on behalf of his wife: they were represented by Mr C Barlow, a barrister.

19. Mr Maunder Taylor gave evidence on behalf of the Applicants. His written statement contained a statement of truth and he gave his evidence as an expert. However his expertise was principally that of a manager rather than that of an engineer or quantity surveyor. Miss Jill Levy and Rabbi Solomons gave evidence on behalf of the Respondents. All three witnesses had tendered written statements and these were taken as read and the hearing proceeded, in the main, by way of cross-examination. The Tribunal also had the benefit of written statements submitted by some of the other Respondents.

PROCEEDURAL ISSUES

20. The Tribunal had before it a letter from Mr H H Marks, the lessee of flat 30, requesting that he be joined as a party to the proceedings. With the consent of Mr Maunder Taylor the Tribunal acceded to the request and directed that Mr H H Marks be added as a Respondent.

21. The directions had required each party to provide the other with a list of documents by 26th November 2003 and had required the Applicant to lodge an agreed bundle with the Tribunal by 19th January 2004. The directions bore a standard legend in the following terms: "**Non-compliance with the Tribunal's directions may result in prejudice to a party's case. In particular, failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence at the full hearing.**"

22. The Applicant had complied with the directions but at the hearing the Respondents tendered a further bundle consisting of 530 pages of evidence but gave no coherent reason for its late submission. The Tribunal had to decide whether to admit this evidence. With some hesitation it decided to do so on the basis that, not having had time to read the evidence, it would be for Mr Barlow to draw the Tribunal's attention to the evidence, contained within the bundle, upon which he wished to rely. In reaching this decision the Tribunal was mindful of the fact that the Respondents had only instructed Mr Barlow late in the day, having previously prepared their own case. To disallow the evidence in its entirety would be disproportionate.

23. During the first afternoon of the hearing it became apparent that Mr Maunder Taylor had not included within the agreed bundle the contract documentation relating to the concrete repairs: in particular the contract instructions and completion certificates. As a result Mr Maunder Taylor was in some difficulty, in proving the cost of the repairs. Mr Barlow robustly invited the Tribunal to dismiss the application. He said that the proceedings, before the Tribunal, were adversarial in nature and that if the Applicant could not prove its case, it should be dismissed. The Tribunal declined Mr Barlow's invitation and permitted Mr Maunder Taylor to submit the missing documents before the start of the following days hearing. It did so for the following reasons: -

    a. The directions had required the Respondents to state their case with the Applicant being required to lodge a statement in reply. As is often the case, in proceedings of this nature, the Respondent tenants had based

their case on the unreasonableness of the service charges rather than focusing on the reasonableness of the cost of the underlying and disputed works. The Applicant had responded to the case presented to it and it would be wrong to penalise it for that; and

b. Having exercised its discretion in the Respondents' favour, by admitting the documents referred to above, it was only equitable that a similar discretion should be exercised in favour of the Applicant.

SUBMISSIONS

24. Mr Barlow produced a skeleton argument outlining the Respondent's case. He had to an extent misunderstood the Tribunal's jurisdiction in that his submissions focused on the recoverability of the service charges actually demanded of the Respondents whereas Section 19(2A) of the Act required the Tribunal to determine, in the context of the dispute, whether the costs incurred for the concrete repairs were reasonably incurred.

25. In any event the Respondents' case was simply put. They did not suggest that the work had not been carried out to a reasonable standard. They did not say that the specification for the work was unreasonable. They said simply that the Applicant, through Maunder Taylor, should have instructed Westcrete to carry out the concrete repairs shortly after the Residents Association gave their approval to the work on 14th April 2000: if they had, the cost would have been substantially less than that ultimately incurred. The Applicant's failure, over a period of nearly three years, to commence the work was wholly unreasonable and the consequent increase in cost was therefore unreasonable.

26. Mr Maunder Taylor denied that the delay was unreasonable and if the delay was not unreasonable then the increased costs were not unreasonable. He said that in placing a major works contract a process had to be followed which included collecting the funds to pay for the work. The Applicant had simply followed that process and they should not be penalised for having done so. The increase in cost was a natural result of the process and was therefore reasonable.

27. It was common ground between the parties that the delay had not led to any deterioration in the structure of Sentinel House. Mr Maunder Taylor did not argue that the delay in carrying out the work had resulted in a saving to the tenants which should be set off against any reduction in the price awarded by the Tribunal. Certainly the Respondents had not had the use of any unpaid service charges in that they had paid all but the disputed sums.

DELAY

28. At the heart of this case were two periods of delay. The first between the Section 20 Notice dated 13th January 2000 and that dated 14th August 2001. The second between the Section 20 Notice dated 14th August 2001 and 25th April 2002 when Concrete Repairs Limited offered two priced options, one of which was accepted.

29. As to the first period of delay the evidence before the Tribunal was to an extent unsatisfactory. Mr Maunder Taylor offered two explanations, which did not sit easily together. He said that it was not reasonable to expect his clients to authorise the work until all the tenants of Sentinel House had paid their interim service charges, which were required to fund the concrete repairs. This is supported by a number of communications and in particular the following: -
    a. A letter sent to the tenants with the Section 20 Notice of 13th January 2000, confirming that work would commence "following receipt of funds from the lessees"; and
    b. A letter to Mrs I Meyer dated 25th May 2000, in which Mr R Tyler on behalf of Maunder Taylor states that "if all the tenants do not provide the required funds as already demanded ....the works themselves cannot be commenced".

30. Mr Maunder Taylor however also offered another explanation for this initial delay. He blamed both DHA for failing to progress the matter and the contractors who were apparently failing to respond to correspondence from DHA. This explanation is supported by the following communications: -

a. A fax from Maunder Taylor to DHA dated 27th September 2000 requesting a start date for the works; and
b. A response of the same date from DHA stating that they had been chasing Westcrete "for the last few weeks but.... they have only just responded"; and
c. A further fax from Maunder Taylor of that day expressing concern that Westcrete now proposed to increase their price; and
d. A response from DHA of 28th September 2000 explaining that Westcrete had originally committed to holding their price to May/June 2000. DHA had not asked for the price to be held for a longer period believing that the work would start by June; and
e. A further fax from Maunder Taylor of 4th October 2000 requesting an update; and
f. An attendance note of 5th October 2000 recording a telephone conversation between DHA and Maunder Taylor in which DHA said that Westcrete were unlikely to hold their price. In consequence they intended contacting another company for a another quote; and
g. A letter from DHA dated 17th November 2000 in which they said that Westcrete had not responded to several requests for confirmation of their price. They had consequently contacted Concrete Repairs Limited who had said that they would hold their price.

31. Written confirmation from Concrete Repairs Limited, that they would hold their price, was received by Maunder Taylor on 24th November 2000. On 3rd December 2000 Maunder Taylor received an email from Simmone Simmons saying that the Residents Association had been advised that substantial savings could be obtained if the work was carried out by abseiling. Maunder Taylor considered that they had to consult further with the Residents Association and the opportunity to instruct Concrete Repairs Limited to proceed, on the basis of their original estimate, was lost. After that Maunder Taylor had little alternative but to go out to tender again and this they did, culminating in the Section 20 Notice of 14th August 2001.

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30. Mr Maunder Taylor however also offered another explanation for this initial delay. He blamed both DHA for failing to progress the matter and the contractors who were apparently failing to respond to correspondence from DHA. This explanation is supported by the following communications: -

32. The second period of delay is more easily explained and was not seriously disputed by Mr Maunder Taylor. Although Maunder Taylor had collected sufficient funds to cover the cost of the work as originally estimated, the re-tender exercise had resulted in a cost increase of approximately £17,000. Maunder Taylor were consequently again short of funds. To cover the shortfall they demanded a further £500 from each tenant. The Residents Association, believing that the demand was unreasonable, advised the tenants not to pay. To quote from Maunder Taylor's letter of 21st December 2001, to Gisby Harrison solicitors, "we are back into a situation were we have insufficient funds to enable us to proceed further". A stand off developed until on 29th November 2002 Maunder Taylor wrote to the Residents Association advising them that they had collected all the money. A statement which was not entirely accurate given that, on 13th January 2003, Maunder Taylor wrote to Ms J Levy advising her that £8,500 remained unpaid.

INCIDENTAL ISSUES

33. Mr Barlow's skeleton argument raised two incidental issues, which he did not mention before the Tribunal. Firstly he requested that the Tribunal "advise" each County Court, in which proceedings had been issued against the Respondents, that the six cases be transferred to the Central London County Court and consolidated. Whilst there may be merit in the suggestion that was not a matter for the Tribunal but rather for the Courts concerned.

34. Secondly he put in issue the reasonableness of the Surveyors fees of 12.5% of the actual price. However he adduced no evidence to challenge those fees. In the experience of the Tribunal they fell within an acceptable band which would normally be considered reasonable: it would not disturb them.

FAILURE TO SERVE THIRD SECTION 20 NOTICE

35. Mr Barlow argued that the Applicants failure to repeat the consultation process was demonstrative of the fact that the costs were unreasonable. Mr Maunder Taylor refuted this, arguing that a Court would have dispensed with

the statutory requirements. He relied on Broadwater Court Management Co Limited v Sylvia Jackson-Mann [1997] (EWCA Civ 2353). The Tribunal drew the attention of the party's to Martin and another v Maryland Estates (1999.26.EG 151). It doubted that it would have been appropriate to dispense with the statutory requirements although it was not a matter for the Tribunal. It nevertheless considered that there was some force in Mr Barlow's argument.

DECISION

36. There are only three ways in which a Tribunal can assess the reasonableness of the cost of any work: -

    i. By using its own skill and experience to measure and value the cost of the work; or
    ii. By reference to expert evidence; or
    iii. If the actual cost has been tested in the market place by a competitive tender exercise.

37. In this case the Tribunal could not use its own skill and experience to measure the cost of the work because at the time of the inspection the concrete surfaces had been redecorated and consequently it was not possible to determine the extent of the work undertaken. Neither party adduced any relevant expert evidence to the Tribunal as to the reasonableness of the cost of the work. Mr Maunder Taylor had suggested that the payment recommendations issued by DHA amounted to an independent verification of the price. The Tribunal disagreed. Maunder Taylor had agreed a price with Concrete Repairs Limited and the payment recommendations were no more than confirmation that a particular stage of the work had been completed and that a certain proportion of the price was due.

38. Consequently in this case the reasonableness of the cost could only be assessed by reference to the two tender exercises that had preceded each of the two Section 20 Notices. The Tribunal was in no doubt that, as at 13th January 2000, a reasonable price was £74,407.88 exclusive of VAT and surveyors fees

and that, as at 14th August 2001, a reasonable price was £87,225.79 exclusive of VAT and surveyors fees.

39. However after the 14th August 2001 the tender process failed and the process by which the final quotation was obtained was seriously flawed and open to question. Mr Maunder Taylor argued that the final contract price must be reasonable because Concrete Repairs Limited had simply increased their 14th August 2001 price to reflect an increase in scaffolding costs and additional health and safety obligations. However he produced no evidence to substantiate the increase in scaffolding costs and he could not identify any change in the health and safety regulations. The price increase was in the order of 20% and the Tribunal considered that it was equally arguable that Concrete Repairs Limited had simply increased their price to reflect both a healthier order book and the knowledge that they were the preferred contractor. Such is the way of the world.

40. As soon as it became obvious that Concrete Repairs Limited would not keep to their last price Maunder Taylor should have gone out to tender again as they had done prior to the 14th August 2001 section 20 Notice. In short there was simply no evidence before the Tribunal to substantiate a reasonable cost in excess of £87,225.79 exclusive of VAT and surveyors fees.

41. Furthermore the Tribunal had no hesitation in concluding that the delay in authorising the work, after the 14th August Section 20 Notice was wholly unreasonable. Having considered all the written documents produced to it and the oral evidence given at the hearing it found, as a fact, that the only reason for that delay was the shortfall, of some £16,000, in the funds necessary to complete the work. In the context of this case that did not justify the Applicant's failure to authorise the work.

42. The leases imposed an absolute obligation on the Applicant, as Landlord, to maintain and repair the exterior and structure of Sentinel House. As Mr Maunder Taylor conceded, the obligation was not subject to the payment by the tenants of the service charges.

43. Furthermore, given the past delays, which had already resulted in a substantial cost increase, the tenants' reluctance to commit further funds before work started was both understandable and reasonable.

44. Finally the Applicants ultimate decision to authorise the work without having received all the funds from the tenants was an indication that they had finally accepted that their position had become untenable.

45. The choice therefore lay between determining a reasonable price of £74,407.88 exclusive of VAT and surveyors fees and £87,225.79 exclusive of VAT and surveyors fees. To determine the lower price the Tribunal would have to conclude that the delay between the two Section 20 Notices was unreasonable. As observed previously the evidence, relating to that delay was unsatisfactory. The two people who might have been able to assist the Tribunal (Ms Simmons, the then joint chair of the Residents' Association and Mr Tyler, who Mr Maunder Taylor said, had been responsible for the contract at his office) were not called to give evidence. All the evidence given at the hearing, in respect of this delay, was second hand and had to be weighed accordingly. The Tribunal therefore had to rely largely upon the documents previously recited in this decision.

46. There seemed no doubt that the Applicant had, from the start, adopted a policy of refusing to authorise the works until it had received funds from the tenants to cover the cost. However it was equally clear, from the correspondence quoted at paragraph 30 that from about the beginning of September 2000 until late November 2000 Maunder Taylor had attempted to get the work started. The inescapable conclusion was that by early September Maunder Taylor had collected enough money to cover the cost of the work. By early December the opportunity to start the work at the original price had, to all intents and purposes, slipped through Maunder Taylor's hands and a subsequent tender exercise was inevitable.

47. It was equally clear from the correspondence that Westcrete would have held their original price until "May/June" 2000. Consequently there was a window of opportunity from 14th April 2001 (when the Residents Association authorised the works) to an indeterminate date in May or June during which Westcrete would have agreed to start the work on the basis of their original contract price. A window of between about 2 and 11 weeks.

48. It could also be said that Concrete Repairs Limited might have agreed to delay the commencement of the works, on the basis of their price, until a later date. However Maunder Taylor did not know that Westcrete would not hold their price. Furthermore Concrete Repairs' willingness to hold their price on 17th November 2000 does not guarantee that they would have done so at an earlier date: everything would have depended on the state of their order book. Crucially Maunder Taylor would have been taking a substantial and perhaps unreasonable risk in proceeding with a company that had not submitted the lowest bid and which had not been authorised by the Residents' Association.

49. It seemed to the Tribunal therefore that it came down to this: had Maunder Taylor and hence the Applicant acted unreasonably in failing to instruct Westcrete to start the work during the window of opportunity referred to? Having considered the factual matrix of this case at some length the Tribunal concluded that they had not.

50. The Residents Association had taken some 3 months to respond to the Section 20 Notice of 13th January 2000 and had requested two extensions of time, which had been granted. In that context it seemed disproportionate to condemn Maunder Taylor for not progressing the next stage of the process within a shorter time frame. Maunder Taylor would have had to consult with their clients. Although the Applicant's covenant to repair was an absolute one it was not unreasonable that they should have some time to order their finances and to prepare and send appropriate demands to the tenants. Furthermore from the Tribunal's own experience it was common with works of this nature, with an extended consultation period, for the Landlord to have to repeat the tender process before the contract was placed. The criticisms of Maunder Taylor, in

this respect, had been made with the benefit of hindsight and had been overstated.

51. Consequently the Tribunal concluded that a reasonable price for the concrete work was £87,225.79 exclusive of VAT and surveyors fees. Two adjustments needed to be made to that figure. Firstly there should be added the cost of the additional work authorised by DHA as the work progressed. The additional work would have been the subject of a contract instruction and DHA would therefore have had the opportunity of assessing the reasonableness of the proposed cost. There should also be added the disbursements incurred by DHA which Mr Barlow had not disputed. In conclusion therefore the Tribunal determined that the reasonable cost of the concrete repairs was £118,116.74 calculated as follows: -

Basic cost	£ 87,225.79
Increased cost resulting from additional work	£ 2,063.61
Sub-total	**£ 89,289.40**
VAT on above at 17.5%	£ 15,625.65
Surveyors fees on Sub-total at 12.50%	£ 11,161.18
VAT on surveyors fees at 17.5%	£ 1,953.21
Disbursements	£ 87.30
Total	**£118,116.74**

52. The service charge and demands would have to be re-cast to take into account both the concessions made by the Applicants in the negotiations prior to the hearing and the determination referred to above.

53. Finally the Tribunal had to consider the Respondents' application to limit the recoverability of the cost of these proceedings and the Applicant's application for the reimbursement of its fees incurred in making the application.

54. The Respondents had been justified in refusing to pay a substantial proportion of the service charges in dispute. The agreement reached between the parties would result in a substantial reduction in the cost, to the tenants, of repairing

the Amenity Area. In respect of the concrete repairs the Tribunal had determined a substantially lower sum than that demanded. The Respondents' stance had been vindicated and it was not reasonable that the Applicant's costs should be visited on them through the service charge. It would be just and equitable to make the order requested. The Tribunal therefore ordered that the Applicant should not be entitled to recover the cost of these proceedings through the service charge. For similar reasons the Tribunal would make no order in respect of the Applicant's fees.

CHAIRMAN:.....

DATED:.....1st April 2004.....

letter dated 26th January 04

PROVIDED THAT :-

(i) the Applicant gives instructions for the works to commence prior to 31/4/04;

(ii) the Respondents make ~~xxxxxx~~ equal monthly instalment payments of service charge corresponding to their respective liabilities between 1st February 04 and 30/9/04

(iii) Should the Applicant not be able to cause commencement of the works (for ~~whatever reason~~ non payment of service charge) no later than 30/9/04, then any additional costs incurred in executing the works shall not form relevant service charge costs of the Respondents

2. For the purposes of s. 20(c) Landlord & Tenant Act 1987 the Applicants costs of and incidental to these proceedings shall not constitute relevant costs in the calculation of service charge.

3. It is ordered that the annual shortfall for the period 31/3/02 shall be recalculated by the Applicant