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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER LANDLORD AND TENANT ACT 1985
SECTION 27A**

Case Reference: LON/00AU/LSC/2011/0228

Premises: Merryweather Court and Brennand Court,
Tremlett Grove, London N19 5LF

Applicants:

(1)	Mr. P. Denis	(Flat 12)
(2)	Miss A. Bikim	(Flat 20)
(3)	Mr F. Bikim	(Flat 23)
(4)	Miss M. Sertage	(Flat 24)
(5)	Ms. M. Tierney	(Flat 31)
(6)	Ms. J. Granville	(Flat 32)

All leaseholders at Merryweather Court

Respondent: Mr M. Searle (Leaseholder Flat 34 Brennand Court)
The Mayor & Burgesses of the London Borough of Islington.

Date of Pre-Trial Review 4th May 2011

Date of Directions 6th October 2011

Date of Hearing 23rd, 24th and 25th January 2012

Date of Decision 29th March 2012

Tribunal Mr S Shaw LLB (Hons) MCI Arb
Mrs. E. Flint FRCIS
Mr A. Ring

DECISION

Introduction

1. This case involves an application made by various leaseholders of two blocks of flats forming part of the Tremlett Grove Estate, which estate is owned and managed by the London Borough of Islington ("the Respondent"). The blocks concerned are Merryweather Court and Brennand Court, Tremlett Grove, London N19 5LF ("the Property"). Six of the Applicants are leaseholders of flats at Merryweather Court and one (Mr M. Searle) at Brennand Court, all as identified in the title of this Decision.
2. At the hearing which took place between the 23rd and 25th January 2012, the Applicants were represented by Mrs. P. Napier (a non-practising barrister), and the Respondent was represented by Ms. Rubina Begum, a solicitor employed by Homes for Islington, which is the Arm's Length Management Organisation (ALMO) with direct dealings on behalf of the Respondent for the particular project which will be referred to below.
3. Major works were carried out on the estate during 2010/2011 under the terms of a qualifying long term agreement. The cost of the works in respect of Brennand Court, inclusive of fees, amounted to very nearly £800,000. The works in respect of Merryweather Court cost approximately £1.8 million. The works were carried out in the context of the Decent Homes Scheme, by virtue of which finance is supplied by Central Government to Local Authorities, to bring their housing stock up to criteria set out within that scheme. Local Authority tenants

are largely shielded from the cost of these works. Leaseholders on the other hand are, subject to certain exemptions, required to pay a proportion of the costs insofar as they relate to obligations contained within their leases. The result of this has been in this case that each Applicant of Merryweather Court has had a demand of £28,258.37 in respect of these works, and the leaseholder of Brennand Court has been required to pay £16,020.55. In fact, the Respondent has capped this contribution to the original estimated cost and, had the actual cost been charged, the individual cost would have been higher.

4. The Applicants challenge the sum claimed within the provisions of Section 27A of the Landlord & Tenant Act 1985 ("the Act") on the basis that, in respect of particular heads of costs, the costs were not reasonably incurred or, otherwise, were not incurred in compliance with the provisions of Section 27A of the Act.
5. During the three day period of the hearing, the Tribunal heard evidence principally from Mr Ian Pearce, BSc (Hons) MRICS, a Chartered Building Surveyor, who has been in practice since 1992, and has worked for various firms as a proprietor, and for local authorities (as clients). He is a Consultant for the firm of building surveyors known as Warmans Surveying, based in Islington. On behalf of the Respondent, the Tribunal heard principally from Mr Garrett McEntee, who is a senior project manager with John Rowan & Partners, who were the project managers engaged by the Respondent or its ALMO in respect of these works. Mr McEntee is also a chartered building surveyor of some experience. Both Mr Pearce and Mr McEntee prepared, a very substantial report (in the case of Mr Pearce) and witness statement (in the case of Mr

McEntee) by which the Tribunal has been much assisted. They also gave evidence at some length before the Tribunal. In addition, the Tribunal heard evidence from certain leaseholders, and other witnesses on behalf of the Respondent, as will be referred to below. Yet further, both the Applicants and the Respondent had prepared substantial Statements of Case and Skeleton Arguments, all in accordance with the directions given by the Tribunal in May and October 2011.

6. Although initially this case involved a challenge directed at the roof works carried out at the property, the case in fact expanded after the application had been made, and challenges were made by the Applicants in respect of several of the heads of work carried out in the context of these major works. The Respondent had prepared a helpful draft final account which was produced at the hearing, and from which the parties worked in considering the challenged heads of works and their respective costs. It is proposed to summarise the evidence from both sides in respect of the challenged heads of work, on an individual basis, and in respect of each head of challenged work to give the Tribunal's findings.

The Roof Works

7. A major part of the works involved the total recovering of the roofs at both Merryweather Court and Brennand Court. There is a significant dispute between the parties in respect of these works. Putting the matter simply, the Respondent contends that these asphalt roofs were, at the time they took their decision to replace them, 42 years old and either at, or nearly at, the end of

their useful life. The Respondent had commissioned a report from Langley Roofing Specialists, which recommended complete recovering or replacement. Core tests had been carried out through the membrane, and the result of those tests, (together with the fact that some repairs had been carried out and there was evidence of some blistering), led to the conclusion that the roofs were in a very poor state of repair. Part of the conclusion was also driven by the fact that the DCLG guidance is to the effect that roofs to blocks of flats qualify for disrepair if they are 30 years old and in poor condition. The roofs of these blocks were installed in 1967 and so far as Mr McEntee was concerned, were in poor condition. A cost analysis had been carried out comparing the cost of a new asphalt roof as opposed to partial renewal or repair of particular areas and this appears at Appendix J of Mr McEntee's statement. The result of this cost analysis was in short that it was not commercially effective to do other than supply a new roof.

8. Mr McEntee was supported in this view by Mr Paul Tobin, who is an architect and group leader for Homes for Islington. He gave evidence to the Tribunal, and in particular made reference to a document produced by CIRIA, which he told the Tribunal was a general advisory body within the building industry – which document in turn refers to the BRE Digest 144, the BRE being, as described by Mr Tobin, the “*flagship*” body within the building industry. At page 267 of the document relied upon, under the heading “Durability”, it is stated:

“Expected life – BRE Digest 144 indicates that a properly designed and laid mastic asphalt roof can prove capable of 50 to 60 years service. Numerous examples exist of satisfactory performance in excess of this period, but the normal target for roofing grade is to seek a life in excess of 25 years.”

9. Condensing their evidence generally, the thrust of the case on behalf of the Respondent was that there was evidence that the roofs were not in good repair and the guidance from independent bodies supported them in taking the view that this was the right time to replace the roofs in their entirety.
10. Mr Pearce, on behalf of the Applicants, took a very different view. It is right to say that he was instructed by the Applicants towards the end of the project and after the roofs had been recovered. He was not therefore able to see the condition of the roofs prior to the works being carried out, but he was able to obtain a good idea of their pre-replacement condition from the extensive photographs that have been taken of one of the roofs prior to its replacement.
11. He told the Tribunal that the first thing he did was to look carefully, from Mr McEntee's report, at the repairs history relating to the roof on both of these buildings. He told the Tribunal that he had studied the repairs history carefully in respect of each roof. So far as Brennand Court is concerned, between 1996 and 2010 he was unable to find any repair relating to the roof or any defect or any incident of water penetration requiring attendance or work. As far as Merryweather Court is concerned, there was a group of three repairs above Flat 30 and two other roof leaks. The repairs had been in isolated areas and did not prove problematic thereafter. Also, some earlier major works had been carried out in 2002/3 and there was only one item related to roofing, which was a small item of £75 in respect of the removal of some shrubs which were growing on one of the roofs. Accordingly, over a period of 14 years, the total

cost of repairs to these roofs by reference to the repairs history produced by the Respondent itself, amounted to about £750.

12. He also pointed out that these asphalt roofs had been overlaid by insulation and concrete slabs. At the very least he would have expected a life expectancy of 50 years. Given that the roofs were built in 1967, they therefore had until at least 2017 before requiring replacement.
13. However, in this case the asphalt had been protected by the concrete slabs in 1988, thereby in his view, prolonging its life. Looking at the photographs, which he pointed out to the Tribunal, with the exception of some shrubs which required removal, he took the view that the roofs had all the appearance of being in reasonably good condition. Accordingly, he was surprised that the decision was taken to recover the whole of these roofs. Given that these were roofs which had an asphalt covering over which there was 50mm insulation and then concrete slabs, he considered that they were giving and would continue to give good protection. The isolated number of repairs from the repairs history supported this conclusion.
14. Mr Pearce accepted that there were two or three isolated areas where the asphalt may have been disturbed. He identified them with reference to the photographs, and doing the best he could, came to the conclusion that there may have been some justification in carrying out these isolated repairs which he costed at approximately £15,000 per building. He was firmly of the view that the

costs incurred of over £200,000 for recovering these roofs were unreasonable and unnecessary.

15. As is correctly identified in the Respondent's Skeleton Argument, in making its determination as to whether a particular service charge is payable under Section 27A of the Act, the Tribunal takes into account costs, only to the extent that they are reasonably incurred (see Section 19 of the Act). There is a further consideration as to whether or not the works are of a reasonable standard, but in this case there is no criticism of the standard of work. Accordingly, the issue for the Tribunal is whether or not these substantial costs have been reasonably incurred on the basis of the evidence before the Tribunal.
16. The Tribunal has come to the conclusion that it prefers the evidence of the Applicants to that of the Respondent on the issue of the dispute in respect of the roof works. The Tribunal was not satisfied that it was reasonable to incur these very substantial costs for a variety of reasons.
17. First, the Respondent was unable to produce any independent survey of the two relevant roofs and their condition prior to the works being carried out. Of course there is, at Appendix C, a report by Langley Roofing, which report recommends its own Langley waterproofing system being used, and comes to the conclusion that the roof areas in question have come to the end of their serviceable life. The main reason for this conclusion is that the roof they inspected had apparently failed because of "*water ingress resulting from the degraded water proofing*". However, this conclusion is not borne out by the

repairs record referred to above. Moreover, the references in this report to "a large amount of plant growth" has led the writer of the report to conclude that "It is highly like that roots will have penetrated the waterproofing system and created areas for water ingress to occur. These areas were not disrupted/investigated as it is likely to cause further damage to the waterproofing system." The conclusion to this extent is therefore based on a supposition which is not borne out by the evidence of Mr Pearce. Moreover, of course, the report is from the very contractors who, if their recommendations are accepted, will be awarded the contract for carrying out the work. Accordingly it cannot be regarded as an impartial conclusion.

18. Secondly, it is not clear from that report that the roof of Merryweather Court was inspected properly at all. At page 48 in the bundle and in the context of that report, it is stated that "... most of the current water proofing is covered and therefore not visible. The comments below are based on visible defects; the existing design can be assumed the same as per Aveling House ...". Mr McEntee advised that the inspection of the roof at Brennand Court involved inspecting the roof covering of approximately 1% of the roof. The roof of Merryweather was not inspected at all. It does seem to the Tribunal that substantial reliance was placed in the Langley report upon conclusions by extrapolation from Aveling House.
19. Thirdly, Mr McEntee told the Tribunal that when he went onto the roof at Brennand Court, in order to judge the condition of the insulation and asphalt beneath, he lifted some seven or eight slabs of the concrete covering. This

amounts to 1% of the total roof area, and even then the Respondent was not able to demonstrate by way of photographs or other evidence, any real confirmation that the asphalt covering was failing.

20. Fourthly, heavy reliance was placed by the Respondent upon the DCLG guidelines. Whilst there is no dispute that these guidelines exist, they are no more than that, that is to say, guidelines. They have to be set against the fact that in the case of these particular roofs, the repairs history showed in relative terms very little by way of expenditure or problem with the relevant roofs. In addition, the evidence from the photographs and Mr Pearce was that localised repairs would have been perfectly reasonable and sensible, and a practical way of dealing with such isolated areas requiring attention, as might be necessary. Yet further, in considering the guidelines, the fact has to be placed in the balance that for the past 20 years, these roofs have been fully protected from the elements by the concrete slabs which have been placed over the insulation and asphalt. This would especially protect the covering from the effects of the sun, which sometimes degrades such covering.
21. A further important consideration which the Tribunal has taken into account in deciding whether or not these costs have been reasonably incurred, is the very considerable cost differential between the total replacement and localised repairs, as advocated on behalf of the Applicants. The differential is in excess of £200,000 as opposed to a small fraction of that figure, to be referred to later in this decision.

22. Yet further, at Appendix J to Mr McEntee's statement is what purports to be a cost benefit analysis supportive of the contention that the course taken by the Respondent was justified. However, as read by the Tribunal, the figures arrived at have been achieved on the basis that the entirety of the roof is taken up in respect of both buildings in order to carry out repairs beneath the slabs – thereby substantially increasing the cost. This is not the course which is contended for by the Applicants (localised individual repairs) and it does not seem to the Tribunal that the analysis has been carried out in the appropriate way.
23. Further, as mentioned above, excessive reliance appears to have been placed upon the condition of the roof at Aveling House which had a significantly more detailed and extensive repair log than that of the subject blocks and had not been covered in concrete slabs for 20 years. There was a reason put forward for this in that the position of that block was such as to take the brunt of inclement weather, whereas the subject blocks were in a different location.
24. A yet further important piece of evidence in this case was that during the course of the works, the concrete slabs were taken up during the most inclement months of the year, that is to say October 2010 to January 2011. During that time, the Tribunal heard that there had been heavy rain and snow. During the whole of that four month period there were no problems encountered at all in terms of any leakages or other required repairs. This supports the contention argued for on behalf of the Applicants that, save for some possible localised repairs, the roof was in good working order.

25. Mr Pearce on behalf of the Applicants, was prepared to accept that some specific repairs would have been reasonable, in particular in relation to the perimeter of the roofs, at the edges and also the up-stands. Those areas were capable of being isolated and repaired as he had indicated earlier. He was the first to accept that his estimate was no more than that, and it may well be, as is often the case, that the estimate is exceeded once the works are carried out. Erring on the safe side, the Tribunal takes the view on the evidence before it, that expenditure in the order of £25,000 on each of these roofs would have been reasonably incurred and, on the evidence of Mr Pearce, prolonged their life for an indefinite but significant period into the future. The Tribunal's finding therefore is that this is the sum to be allowed under this head of repairs in substitution for that claimed against the Applicants.

Asbestos Removal/Concrete Cladding/Insulation/Decorations

26. At page 100 of Mr Pearce' report, he cites a passage in the report of John Rowan & Partners, who are the construction consultants appointed by Homes for Islington. In that report they discussed the fact that boilers are to be replaced in several of the tenanted properties on the estate. The boilers are fitted in cupboards and those cupboards have a panel which covers them on the external elevation. The report indicates that the boilers cannot easily be removed without taking the panels away. This of itself is uncontentious. However the consequence remains very much in contention. The passage cited by Mr Pearce reads:

"The replacement of just one panel to 76 properties however would look somewhat unusual therefore the proposal is to replace all of the

panels on all blocks. This will bring the U values up to current standards and have a more aesthetically pleasing finish to the elevations."

27. The thrust of Mr Pearce's evidence on behalf of the Applicants was that the greater part of this work was entirely unnecessary. That is to say, the work in respect of the asbestos removal, the external wall insulation and cladding which amounted to substantial expenditure, as set out in the spreadsheet prepared by the Respondent. Although it is correct that Mr Pearce did not view the property prior to the work being carried out, he has had the benefit of some detailed photographs and the Tribunal did hear from Mr McEntee.

28. At paragraph 111 of Mr McEntee's report, it is stated that because of the poor condition of the external panels and the risk of asbestos exposure to operatives working on the structural repairs, window renewal works, window repairs and external decorations and timber repairs, a decision was made to remove and renew the cladding, thereby avoiding the need for external decoration to the blocks which would provide a future costs saving. As to this, Mr Pearce entirely disagreed. So far as he was concerned, there was no real risk of exposure to asbestos because such asbestos as existed was well contained in respect of the greater part of the relevant buildings. Mr Pearce has some specialist background in the treatment of asbestos, and was of the firm view that in many respects it was safer not to disturb many of these panels, rather than to remove them. The panels which had to be removed were removed as part of the Decent Homes Scheme, in order to replace the boilers within the tenanted flats. So far as these panels were concerned, there was a necessity to have them removed in order to obtain access to the boilers and the asbestos would

necessarily be disturbed. There was therefore some justification for removal of these panels and also removal of the asbestos. However, as already indicated, so far as the Applicants were concerned, these formed no more than a minority of the relevant flats and it justified by no means the removal of all of these panels and all of the asbestos and recladding, at some very considerable expense.

29. It appeared, during the course of the evidence of Mr McEntee, that although he had taken photographs of a number of panels which had demonstrated some degree of corrosion, he was unable to identify with certainty the blocks from which some of these photographs had come. It also transpired that the decision to carry out the work in this comprehensive way was spurred by a discovery at Aveling House that some of the timber frames forming part of the fabric of the building had rotted away. It seems that the sub-frames of some of the windows had deteriorated because of some form of design defect causing escape of water or moisture from certain condensation ducts. This may well be right, so far as Aveling House is concerned, but as repeatedly featured in the evidence, there was no overall condition report prepared which identified the specific areas for concern. The firm evidence from Mr Pearce was that he was unable to identify wide scale rot or corrosion in either Merryweather Court or Brennand Court, and Mr McEntee for his part, freely accepted in evidence that he was in difficulty in specifically identifying the particular blocks from which certain of his photographs had been taken.

30. There was no asbestos expert who had firmly recommended to the Respondent that the asbestos in affected areas should be removed. The contention by Mr Pearce and on behalf of the Applicants generally was that the panels should not have been removed in this wholesale way, and that the decorative and other associated work was unnecessary.
31. The Tribunal does not accept the contention made on behalf of the Respondent that there was no alternative but to do this work to the two blocks with which this case is concerned. It seems to the Tribunal that a conclusion was drawn on the basis of the rotting to the timber sub-frames that have been found at Aveling House, to the effect that a "*blanket approach*" should be taken in respect of each of the buildings on the estate. That, it seemed to the Tribunal, was not a decision borne out by the evidence which has been put before the Tribunal.
32. Mr Pearce conceded that there were some isolated areas which he had found, and which had been illustrated in some of the photographs, where some corrosion had taken place, and of course the removal of the panels for replacement of boilers to the tenanted properties was unavoidable. Some part of this work therefore was reasonable and necessary and it is necessary to make an estimate as to which, or what portion of the, expenditure is justified in that respect. The Tribunal has concluded that the isolated areas concerned involving corrosion and the removal of the individual panels for the tenanted blocks would justify allowance of 10% of the cost of this work. This is the cost which the Tribunal finds reasonable as will be seen reflected in the schedule attached to this decision.

33. Mr McEntee candidly conceded that the Respondent had no record of defective panels specifically at the Merryweather and Brennand Courts. In relation to the photos showing corrosion, he accepted that they were unidentified and that they could have been decorated. He speculated that some of the photographs were taken at Merryweather Court but he did not have a record of which photographs they might be. He had no written record of defects and accepted, as indicated, that he could not identify which properties the photographs illustrated defects.
34. For the reasons indicated, the Tribunal preferred the evidence of Mr Pearce in respect of these works and this expenditure. It seemed to the Tribunal that a decision had indeed been taken in a "blanket way" which was not justified on the evidence put before the Tribunal. Aveling Court was taken as a model for the decision but the Respondent was unable to identify any rotting timbers in respect of these particular buildings, the subject matter of this application. The asbestos existing in these buildings was contained and no asbestos or expert report suggested that it was required to remove that asbestos. The relevant panels to be removed were perfectly capable of being isolated and had this occurred, then there would have been a reasonable and very substantial saving in costs. That element of the work which was required to be done, the Tribunal assesses in the order of 10% and it is this percentage of that work which is allowed, as seen reflected in the schedule attached to this Decision.

Windows

35. Item 4 on the spreadsheet representing the draft final account indicates very substantial expenditure on replacement of the rear windows at these blocks.

Mr Pearce's evidence was that he was unable to find in the repairs log at page 110/111 of the Respondent's report any particular repairs referable to windows in the general list. He did find six repairs referable to Brennand Court, but these appeared to be substantially at the front rather than the rear of the property. He discounted incidents of broken glass and the effect of his evidence was that between the period 2006 to 2010 the logs of repairs provided just two repairs as being carried out. Also he pointed out that during 2002/3, when earlier major works were carried out, nothing was allocated for window repairs then, suggestive of the fact that none were necessary at that stage. Generally he argued that if people are unhappy with their windows, they are quick to complain.

36. Mr Pearce made reference to page 258 (photograph 59) in his report which shows the quality of the window frames just before the works started at Merryweather Court. He argued that they showed frames in good repair (as indeed seems to be the position from this photograph) and he told the Tribunal that these photographs were consistent with chopped up frames that he had found in a skip when he visited the property after the works had started. Indeed his general view was that the frames were of a *"very high quality"*. There were no real signs of significant decay, and again he referred to photograph 64 of his report as illustrating that there were no obvious signs of decay. He made the point that the rear windows in these blocks are mainly east facing, and therefore receive less weathering than the rear windows of those blocks with south or south west facing rear elevations. He himself did not see any repairs caused by decay at Merryweather Court

37. In addition, the Tribunal heard evidence from Miss Sertage who is the leasehold owner of Flat 24. Miss Sertage was particularly annoyed at receiving a Section 20 Notice which suggested that the windows at her block were rotten, and appeared to show some photographs to this effect. She was so concerned about the matter that she contacted the Respondent and succeeded in obtaining the attention of Mr McEntee, who came to visit her, and they walked around to the back of the block. Her evidence to the Tribunal was that Mr McEntee was unable to identify the windows in the photographs as being those at Merryweather Court. Miss Sertage wrote an email to the council saying that the window frames were in good condition and that the work was not justified. She told the Tribunal that she had not received a reply to that email. She said that she had not been consulted about these works at all, and she wanted to have photographs specific to her block to justify the work; none were ever presented.
38. Mr McEntee told the Tribunal that there were approximately 100 flats on the estate and that he had looked specifically at two flats, but took the whole estate into account. He had found some sealing strips which were failing, but he conceded that Brennand Court and Merryweather Court were in better condition because of their orientation. He felt that repairs to some of the windows and not others would result in "bad value for money" and would be a wrong decision to make in terms of future management. In cross-examination he conceded that he had found no particular frame twisting to windows on these two blocks. The twisting which did exist was on the other three blocks. He did accept that everything that he had seen on these two blocks could have been repaired

rather than replaced, and that he had entered only two flats before coming to his conclusion.

39. Once again, it did seem to the Tribunal that the decision to replace these windows had been taken on the basis of excessive reliance on the DCLG Guide (to the effect that single glazed windows of this kind had a life expectancy of about 30 years) and also heavy reliance upon the fact that some rotting had been found in the other blocks which had a different orientation. In fact the windows concerned were hard wood, there was no real evidence put before the Tribunal of significant decay, and the photos produced were apparently not from Merryweather or Brennand Court. No specialist report was produced from an independent window expert, and there was lay evidence from Miss Sertage to the effect that the windows were in perfectly good order, and that when challenged, the Respondent had been unable to support any contention to the contrary.
40. The balance of the evidence before the Tribunal does not support the contention that the cost involved in replacing these windows was reasonably incurred. There was justification for some localised repairs, and doing the best it can on the evidence, the Tribunal assesses a reasonable sum in respect of these repairs to be in the order of £10,000 for each block, which, if anything, the Tribunal considers to be a generous allowance. This is the sum determined as reasonable within this category of work, again as reflected in the schedule attached to the Decision.

Scaffolding

41. A further challenge made by the Applicants was in respect of the costs attributable to scaffolding during the course of these major works. In principle the necessity for scaffolding was not challenged, but particular points were taken in respect of the Heras fencing, the access staircases and some hoists. Respectively, it was suggested that the Heras fencing was unnecessary and in any event poorly secured, the staircases were not justified because heavy or bulky items could have been carried upstairs, and the hoist was also unnecessary for similar reasons.

42. The Tribunal did not think that these challenges were well made out. The Heras fencing was necessary from a health and safety point of view, and the staircases were also obviously justified because it would not have been practicable to use the staircases which were utilised by residents of the block, for carrying up heavy building material or tools. The sums involved in the scheme of things were not disproportionate to the nature of the work, and this objection is rejected.

Balconies

43. Expenditure was incurred under "*general repairs*" in the draft final account for waterproofing of the balcony areas at the properties. Mr Pearce's evidence on behalf of the Applicants, was that he accepted that some asphalt repairs were required. The balcony walk ways in the common parts at the flats were asphalt covered concrete. He has seen these particular works both before and after. He estimated that about £1500 expenditure was necessary on localised repairs

in respect of each of the relevant blocks. So far as he was concerned, the surfacing of the balconies was not in bad condition – a few areas required some repair but by no means all. He expands the position in his report at page 214.

44. However, such repairs as were carried out were badly executed. He illustrates the poor standard of the work in photographs 30 and 31 of his report and also refers to a photograph at page 160 of Mr McEntee's evidence. These photographs do indeed show a somewhat shoddy finish.
45. Mr McEntee, in response to this criticism said that the repairs were required because the asphalt was generally in poor repair and was 42 years old. He told the Tribunal that once asphalt ages beyond 30 years, the oil dries out, and the adherence (presumably to the surface below) weakens so that when one removes pieces (for the purposes of repair) more than had been anticipated is uplifted. He felt that one could start with small repairs and end up having to do much more. He took the view that it would be better to coat all the areas entirely with a plastic coating, and obtain a guarantee, and that furthermore this aesthetically would look better. This latter comment drew some disbelief from the Applicants present, who felt that the surface now looked significantly worse than it had done previously.
46. So far as the Tribunal is concerned, it was persuaded by Mr Pearce that such leaks as there were, existed close to the areas where the balcony abutted the parapet wall. In many areas these points had been left, and a coating had been carelessly applied, as illustrated in the photographs. The Tribunal was of the

view that these failings should have been picked up at the snagging stage but apparently never were. The decision as to whether to resurface completely or carry out localised repairs, the Tribunal considered was a delicate one in this case, and the decision to resurface is not in principle, in the view of the Tribunal, unreasonable. However the quality of work was of a poor standard and justifies, in the view of the Tribunal, no more than 50% of the cost incurred. This adjustment is made in the schedule attached to the decision.

Lightning Conductor

47. A relatively small charge has been made for the installation of a lightning conductor at the property. The criticism which has been made is that the conductor has not been properly commissioned and at present is not in a position to function as an effective lightning conductor at all. Indeed the suggestion has been that, if anything, the projection which presently exists is more likely to attract, rather than to conduct, any lightning which may present a danger. It is also said that this conductor was a late "add on" and not included in the original consultation.

48. It was in effect conceded on behalf of the Respondent that the conductor has not yet been properly commissioned. The not altogether satisfactory explanation for this was that in order to drive the conductor properly into the ground, it was necessary to obtain plans from the utility suppliers, in order to make sure that in fixing the conductor, there was no interruption to or damage created for any of the electricity, drainage or other relevant utilities serving the

buildings. Of course it could reasonably be said that these enquiries should prudently be made before erecting the conductor at all.

49. While these criticisms have some justification, in the scheme of things, the cost of the lightning conductor to each leaseholder is approximately £140. The facility, when properly commissioned, will be a sensible addition to the buildings. The fact that it has not yet properly been commissioned seems to the Tribunal something which can properly be reflected in consideration of the reasonableness of the professional fees in this case, and no adjustment is made in respect of this cost.

Fees

50. There was also criticism of the Respondent by the Applicants in respect of the preliminary costs which formed part of this project. In respect of this criticism, the Tribunal heard evidence from Mr Richard Powell, who is the Special Projects Officer who dealt with this matter for the Home Ownership Team of the Respondent. He has some 20 years experience in leasehold management and he told the Tribunal that these fee rates are very standard and are either reasonable or not. In this particular case a framework contract had been used, and he stressed that it was important to look at the overall global figure in deciding whether or not the costs were reasonable – he contended strongly that 15% was entirely in line with industry practice, and that indeed there was no profit margin in this percentage for the ALMO.

51. The Applicants' criticisms of the preliminaries were really, it seemed to the Tribunal, more properly directed to the management or professional fees. The preliminaries have been estimated at £60,397.11 and £89,336.67 respectively in relation to the two buildings which formed the subject matter of this application. The Respondent has said that it will cap its claim to these figures and, so far as the Tribunal is concerned, those estimated costs are within a reasonable range for a major project of this kind and no adjustment is made of these costs by the Tribunal.

Professional fees

52. Professional fees were charged at the rate of 11% of the cost of the works. This was criticised by the Applicants through Mr Pearce, but it seemed to the Tribunal that, again, applying the Tribunal's experience of these matters, 11% is in principle within the range, and a fair percentage for a large and complex project of this kind. Mr Powell told the Tribunal, and the Tribunal accepts that this is a standard model, and that the fees are not calculated on an hourly basis; any other approach would involve very substantial costs being incurred by accountants.

53. Although the starting point for these fees is, as indicated above, reasonable as far as the Tribunal is concerned, there were several respects in which the Tribunal was not satisfied that this project had been especially well managed. First, there was no Condition Survey put before the Tribunal to demonstrate the need for carrying out these works as established by some kind of independent survey. Secondly, there was no independent proper survey in respect of major

parts of the works, for example the roofs and the windows. These works appear to have been carried out, as already indicated in this decision, based upon some findings not necessarily obtained from either Merryweather or Brennand Court. Thirdly, there were examples of poor finishes and unsatisfactory overseeing of the works. Some examples in this respect were the poor finish to the balcony surfaces and the failure properly to investigate the utilities position before installing the lightening conductor. Fourthly, there was uncertainty by reference to the photographs, so far as the Respondent was concerned, in identifying exactly which building the photographs were supposed to illustrate. This was not helpful in assessing these works and it was to some extent surprising that these photographs could not be properly identified. Generally there appear to have been relatively poor record keeping and, as already observed above, something of a uniform approach was taken to the whole project based upon some findings at another building on the estate whereas different conditions applied to the subject properties.

54. For all of these reasons, it does seem to the Tribunal that although, as indicated, the 11% is a reasonable starting point, there should be some adjustment to reflect these shortcomings and the Tribunal assesses such adjustment in the order of 1%, i.e the overall fee percentage should be reduced to 10% rather than the 11% claimed in order to render the same reasonable for the purposes of the Act.

Brennard Court	Estimated, capped cost	Actual cost	Tribunal Decision
roof	£102,043	£97,549	£25,000
asbestos removal	£50,369	£50,369	£5,037
external cladding	£113,829	£68,352	£6,835
windows	£43,252	£90,413	£10,000
balconies	£7,880	£7,880	£3,940
scaffolding	£49,720	£73,936	£49,720
lightning conductor	£4,002	£4,002	£4,002
Preliminaries	£60,397	£122,362	£60,397
Fees	11%	11%	10%
Merryweather Court			
roof	£118,107	£111,112	£25,000
asbestos removal etc	£107,002	£107,002	£10,700
external cladding	£236,659	£138,495	£13,850
windows	£48,715	£149,543	£10,000
balconies	£7,880	£7,880	£3,940
scaffolding	£58,001	£109,745	£58,001
lightning conductor	£4,002	£4,002	£4,002
Preliminaries	£89,327	£180,994	£89,327
Fees	11%	11%	10%