Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: **1025929/Linton Court**

In the Matter of: **9 Linton Court, Abersychan, Pontypool, Torfaen NP4 6TQ**

In the matter of an Application under section 27A Landlord and Tenant Act 1985

TRIBUNAL	Chair:	Mr. E.W. Paton
	Surveyor:	Mrs. Ceri Trotman-Jones
	Lay Member:	Mrs. Carole Calvin-Thomas

APPLICANTS (1) **Peter Evans (2) Angela Evans**

RESPONDENT **Bron Afon Community Housing Limited**

HEARING AND INSPECTION DATE: 10th December 2012

ORDER

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1. In relation to the "qualifying works" (for the purposes of section 20 Landlord and Tenant Act 1985) consisting of the works to the roof of Linton Court, Abersychan, Pontypool carried out in 2011, as particularised in the Respondent's "Summary of Costs for Linton Court" totalling £58,619.40, and for which the Respondent sought payment from the Applicants of the service charge contribution of £4884.95, it is determined and declared as follows:-

i) in relation to the Applicants, the Respondent failed to comply fully with the provisions of the Service Charges (Consultation Requirements) (Wales) Regulations 2004, for the reasons set out in the decision of the Tribunal; accordingly

ii) the Respondent may not recover from the Applicants any amount greater than £250 by way of service charge contribution in respect of those works.

2. No order for costs is made, but the Applicants shall have permission to apply to the Tribunal, on notice to the Respondent, for an order under section 20C Landlord and Tenant Act 1985 in the event that the Respondent seeks to recover via service charge any of its costs incurred in this application.

DATED: this 19th day of December 2012

E.W. Paton
Chairman

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APPLICANTS (1) **Peter Evans (2) Angela Evans**

RESPONDENT **Bron Afon Community Housing Limited**

HEARING AND INSPECTION DATE: 10th December 2012

The Applicants represented themselves

For the Respondents: Mr. R. Vernon (counsel), instructed by Messrs. Morgan Cole LLP

DECISION AND ORDER

1. The Applicants are the joint registered proprietors, under title number WA588727, of a one bedroomed flat at the above address, which they acquired for £37,000 on 9th October 2009. They were registered as leasehold proprietors with effect from 15th October 2009. The flat is on the first floor of a block of twelve. The block appears to be of 1960s or 1970s construction.

2. The Applicants bought the property as an investment property to sub-let, and have never lived in it. Their home address in Ty Coch, Cwmbran is shown on the proprietorship register of their title to the above flat. They sub-let the flat to a female tenant from about January to November 2010, and it is currently sub-let to someone else, although there may have been times between those lettings when the flat was unoccupied.

3. The head lease of the flat was granted on 22nd April 1991 by Torfaen Borough Council to one Mr. W. Hodrien, following the exercise by him of his statutory "right to buy" under the Housing Act 1985. The Respondent acquired the freehold of Linton Court (including the reversion to this lease), along with other parts of Torfaen's former Council housing stock, by what we assume was a "large scale voluntary transfer" on 31st March 2008. It is now registered as freehold proprietor of that land under title number CYM 327912. In Linton Court, there are three flats (including the Applicants' flat no. 9) which are privately owned by way of long leases granted under the "right to buy". The other nine are in the ownership of the Respondent, and are let as social housing under assured tenancies.

4. The clauses of the lease of flat 9 relevant to the present application are clauses 6 and 7 concerning the levying and paying of service charges by the landlord. We will not set them out in full. In summary:-

   i) the lessee covenants [at 6(ii)] to contribute and pay one-twelfth of "the costs expenses and outgoings incurred by the Council [which obviously applies to the Respondent as its successor in title] in respect of the matters set out in Clause 7(E) (F) and (G)...such payment to be made yearly on the 1st April to cover the period to the following 31st March..."

   ii) Clauses 7(E) (F) and (G) are in fairly broad terms, going beyond mere repair and maintenance covenants. The landlord covenants:

   (a) "..To carry out such improvements or repairs to the flat as the Council in its absolute discretion deem appropriate.."

(b) " [to] Maintain repair improve renew and decorate:

...the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the property"

iii) the lessee also covenanted separately to pay an annual management and administration charge, set at £1229 in 1991 with provision for this charge to rise in accordance with the index of retail prices.

5. It is also worth noting that the lease:-

i) contained no express provision, as is frequently included in long leases, governing the service of notices on the lessee e.g. by deeming that service may be effected at the premises themselves

ii) contained, in the service charge and landlord's covenants, no express 'catch all' provision to permit the levying of service charge for legal costs, although there is a specific covenant at clause 5(e) requiring the lessee to pay the costs of and incidental to any section 146 Law of Property Act 1925 notice.

6. In 2010 the Respondent decided that the roof of Linton Court, and also that of the nearby Afon Court, required complete renewal, to maintain the weather tightness and therefore the structural condition of those blocks. We have not seen detailed drawings, photographs or specifications, and could not see the roof on our site visit, but we understand that the roof was essentially a flat roof (with or without some gullies or ridges) and so likely to be in need of repair or renewal from time to time.

7. This application is not a challenge under section 19 of the Landlord and Tenant Act 1985 which seeks to question the reasonableness of the Respondent's decision to do any work at all to the roof, but we observe that there is presently no reason to doubt to the reasonableness or *bona fides* of the Respondent in taking that view and decision in 2010, or that such works were in principle within the scope of the lease covenants

mentioned above.

8. Works to the roof, and some further and ancillary works, were later carried out, between May and August 2011. Without at this stage going further into the detail of how the works and their cost were comprised (see further below), the "bottom line" is that the Applicants are being asked to pay a service charge contribution for the accounting year 2011-2012 of **£4884.95** towards those works, being one-twelfth of a total sum of £58,619.40 attributed by the Respondent to the works solely to Linton Court. The Applicants have not paid that sum. They have paid all other service charge amounts demanded for that year.

9. Renewal of a roof is usually an expensive job. It was therefore clear to the Respondent from the outset that its proposed works would constitute "qualifying works" for the purposes of section 20 Landlord and Tenant Act 1985, as the likely contribution per service charge-paying tenant (one twelfth of the cost of the works) would clearly exceed the current statutory limit of £250.

10. These works therefore engaged the detailed consultation, estimates and notice procedure provided for by section 20, and which is contained in detail, for the purposes of premises in Wales, in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 [SI 2004 No. 684 (W.72)]: hereafter, "the Regulations". In particular, it is the provisions in Schedule 4, Part 2 of the Regulations which applied here, as these were "qualifying works" which were not part of a "qualifying long term agreement" and for which no "public notice" was required.

11. Compliance with the regulations is mandatory if the landlord wishes to recover more than the statutory sum of £250 from a service charge-paying tenant in respect of the "qualifying works", save where the landlord applies for and obtains dispensation from their requirements under section 20(ZA) of the 1985 Act. Such dispensation can be sought prospectively or retrospectively. None was sought, or has been sought, in this case. The Tribunal gave a direction on 17th August 2012 that if the Respondent wished to apply in these proceedings for such dispensation it should do so by 7th September 2012. It did not do so.

12. While some landlords, private or social, may consider the Regulations and their requirements to be excessively complicated, pernickety or even harsh, the Regulations and the legislative purpose behind them (and section 20) were summarised by the Court of Appeal recently in *Daejan Investments v. Benson* [2011] 1 WLR 2330, in the context of considering the dispensing power under section 20(ZA). The three stage process contained in the Regulations is designed to strengthen and protect the position of leaseholders, by giving them a say in the choice of contractors for qualifying works, the opportunity to nominate their own potential contractor and the right to be consulted then given reasons by the landlord in relation to the decision it eventually takes.

13. The Court in *Daejan*, quoting from the decision of the Upper Tribunal in that case, summarised the three stage process generally required. In fact, in some cases (such as the present) it may only be a two stage process, as set out below.

Stage 1: Notice of Intention

14. The first stage is contained in regulations 1 and 2 of Schedule 4 Part 2 of the Regulations. It is worth copying and setting out those provisions in full:

1. - (1) The landlord shall give notice in writing of intention to carry out qualifying works -
(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

The following observations may be made about the above provisions.

15. First, such "notice" must be "given" to the individual tenants and any recognised tenants' association. Neither the 1985 Act nor the Regulations contain any provisions as to service of notices, by way of "deeming" provisions or otherwise. Nor is this a notice "required or authorised to be served or given" by the Law of Property Act 1925 or any "instrument affecting property executed or coming into operation after [the

commencement of the 1925 Act]". Mr. Vernon, who appeared for the Respondent, wisely accepted that the latter phrase is apt only to include executed private "instruments" such as leases, deeds or contracts, not statutory "instruments" such as the Regulations.

16. It therefore seems to us that in this case, as in the two Court of Appeal cases of *Enfield LBC v. Devonish* [1996] 29 HLR 691 and *Wandsworth LBC v. Atwell* [1995] 27 HLR 526, *The Times* 22/4/95 (of which the Tribunal supplied copies to the parties at the hearing), the landlord cannot rely on section 196 Law of Property Act 1925, and in particular section 196(3), which deems service to be sufficient if "..in the case of a notice required or authorised to be served on a lessee..is affixed or left for him on the land or any house or building comprised in the lease..".

17. As was the position in those cases in relation to the notices to quit, in the absence of any specific statutory or contractual service provision, the Respondent would therefore have to prove at common law that the Notice of Intention and other notices under the Regulations were "given" to the tenant, meaning that (in the words of Lord Justice Kennedy at paragraph 4 of *Enfield LBC*):

"..to be effective the service of such notice had to be personal, or the council had to be able to prove (which it could not) that the notice left at the property came into the hands of the first defendant, his wife or his servant."

18. Despite the submissions of Mr. Vernon for the Respondent to the contrary, there is no relevant distinction to be drawn between the position in relation to the notices to quit in those cases, and the Regulations notices in this case. In both situations a written notice had to be effectively "given", and in neither case was there a specific statutory or contractual deeming provision which enabled the landlord to rely on a particular mode of deemed service such as leaving the notice at the demised premises.

19. Secondly, the particulars set out in regulations 1(2) and 2 are cumulative and mandatory. The landlord has to comply with them *all*, otherwise an effective Notice of Intention will not have been "given". Each of those requirements and particulars

has a separate purpose. If any one of them is not complied with, the tenant may suffer prejudice, although proof of any such prejudice is not a requirement if the validity of a notice is challenged.

The 9th March 2010 Notice of Intention

20. The Respondent's sole, and only possible case on compliance with regulations 1 and 2 is based on the letter headed "Notice of Intention to Carry out Work" dated 9th March 2010 which appeared at pages 25 and 26 of the hearing bundle. We will not set out its contents in full. The first page purported to contain the various particulars required by the Regulations. The second page consisted of some legal "explanatory notes" relating to section 20 of the 1985 Act and the consultation requirements.

21. As to the content of this Notice, we make the following findings and observations, with reference to the relevant parts of the Regulations:-

i) it did "describe, in general terms, the works proposed to be carried out", as "Replacement of Roof Covering and Ancillary Works", and "specified a place and hours at which a description of the works may be inspected", namely at the Respondent's "HQ", between 9 and 5.

While it would have been better to spell out a full address for "Bron Afon Community Housing HQ", sufficient information and a telephone number was given so that this just about complied with regulation 1(2)(a).

We also find that it complied with regulation 2, in that the place and hours specified for inspection were both "reasonable", and there is no reason to doubt that a description of the works could have been inspected there free of charge.

ii) it did "state the landlord's reasons for considering it necessary to carry out the proposed works", namely: "..for Bron Afon to meet Statutory Obligation [sic] as Landlord and to maintain weather tightness to building".

That was fairly simple and general but in our view complied with regulation 1(2)(b).

iii) it did "invite the making, in writing, of observations in relation to the proposed works", in the first sentence of paragraph 4: "We invite you to make written observations on the proposed works....". That complied with regulation 1(2)(c)

iv) it then "specif[ied] an address to which such observations may be sent", this time setting out a proper full address in Cwmbran. This met regulation 1(2)(d)(i).

v) jumping ahead somewhat, it also complied with regulation 1(3), in that paragraph 5 invited the tenant to propose "within the relevant period..the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works". Paragraph 5 of the notice did that. The phrase "relevant period" is defined in the Regulations as "the period of 30 days beginning with the date of the notice". Paragraph 5 used the phrase "within 30 days from the date of this notice".

22. There is more difficulty for the landlord however, raised by regulations 1(2)(d) (ii) and (iii). As stated, these are separate and distinct requirements. (ii) requires the landlord to "specify..that [any written observations] must be delivered within the relevant period". As with regulation 1(3), it would therefore be sufficient to say that in terms, or substitute the words "30 days from the date of this notice" for "relevant period". What the Notice said here was:

"Observations must be made within the consultation period of 30 days from the date of this notice."

23. That was probably sufficient in relation to 1(2)(d)(ii). Regulation 1(2)(d)(iii), however, separately requires that the Notice must specify **"..the date on which the relevant period ends"**. The purpose of this additional requirement is in our view clear. There is always scope for confusion arising from notices, and indeed Tribunal or Court orders, if a period for taking a specified step is left simply in the form "within *x* days" or "within *x* days from/of/after the date of this notice/order etc.". If

expressed in that fashion, is the time to be reckoned from the date the notice bears, the date it was sent or the date it was received and came to the attention of the recipient? If the word "from" is used, does that include or exclude that initial date? That is why it is always best to give a clear deadline date, so there is no room for doubt in the mind of the recipient.

24. Unfortunately, for reasons not explained or addressed in any evidence, the Respondent attempted to do this but simply got it wrong. The notice said:

"The consultation period will end on (Friday 22 January 2010).."

That was a date some 6 weeks *prior* to the date of the notice and so could not amount to compliance with regulation 1(2)(d)(iii).

25. Mr. Vernon sought to argue that this failure and defect was cured by the words of the preceding sentence, set out in paragraph 20 above, but in our view those words could not have that effect. They did not specify any "date". They were clearly what was required to comply with 1(2)(d)(ii), but it is not enough under the Regulations just to refer to the statutory "relevant period" of 30 days from the date of the notice, or refer to it as the "consultation period". That gives rise to the uncertainty and "reckoning" problems mentioned above. Mr. Vernon was forced by this argument to submit that even if the final sentence of paragraph 4 had been omitted completely, the Notice would still have complied, but in our view that cannot be right. Specification of a date is essential. The Respondent recognised this, in this Notice and in a later Notice (see below) in February 2011. Its error in this Notice was to specify an impossible and therefore invalid date.

26. For that reason, even if this notice was found to have been "given" to the Applicants in time, we find that it did not comply with the Regulations and so was ineffective for that purpose.

Was the notice "given"?

27. In case we are wrong on that first point, and in case this matter is appealed, it is necessary to deal with the issue of service, or rather whether the Notice of Intention, had it been valid, was duly "given" to the Applicants for the purposes of the Regulations. We have set out above in paragraphs 15 to 18 above what in our view is the correct legal approach to this issue.

The evidence

28. The Respondent, Bron Afon, called no oral or witness statement evidence in this case, either as to service or any other issue. The most that could be said on its behalf by Mr. Vernon was that his instructions, reflected in some of the documents and written submissions before the Tribunal, were that the 9th March 2010 letter was hand delivered to 9 Linton Court on that day. As stated, no witness was called who could speak to that issue and give any further details, such as – how did s/he get into the block? What time of day was it? Did s/he knock on the door first?

29. This is far from satisfactory, but we are prepared to assume for present purposes that something of this sort may have been done, on or around that day, and that a representative of the Respondent could have obtained access to the inside of Linton Court by virtue of its ownership of the common parts and the nine flats.

30. It is, however, quite clear, and common ground, that the Applicants were not living at the premises at that time, and never had done. The flat was then in the occupation of a female sub-tenant, and the letting to her was managed for the Applicants by a firm of agents. The Applicants' home address was also a matter of public record, on the proprietorship register of their registered title to the flat. The Respondent, and indeed any member of the public, could have seen that by obtaining an office copy of that title, which costs £3 from HM Land Registry's website. The Applicants, we find, never made any statement or representation to the Respondent that their own address was that of the flat or that any documents should be sent there.

31. Had the notice otherwise been valid, the Respondent would have had to prove not just that it came into the hands of the Applicants *eventually*, but that they received it in sufficient time to enable the rights provided by the Regulations and specified in the notice to be capable of effective exercise. For example, if the Notice had specified a final date for the making of written observations as (say) 1st May 2010, it would not be much use if the Respondent could only prove that it came to the Applicants' attention after that time.

32. In the event, we accept the Applicants' evidence, provided to us orally at the hearing, and find as follows:-

i) this Notice did not come into their hands, either in March 2010 or at all until they saw a copy of it in the papers disclosed in this application. At most, they were first notified of its existence in a 15th February 2011 letter to them, but did not see it then or subsequently.

ii) while their agent essentially managed the property for them (and was their agent for the purposes of this sub-letting only, not a general "agent" authorised by them to deal with the Respondent), they did occasionally visit the flat, but not frequently.

iii) on one such occasion in October 2010, they did visit and (to the consternation of Mrs. Evans in particular) found a bundle of invoice letters in the kitchen, being the Respondent's various service charge demands made in 2010. Mrs. Evans promptly went to the Respondent's offices and paid these: we saw a receipt for payment dated 20th October 2010. We also accept and find, as would have been sensible for any person to say on such an occasion, that she told them that the reason for the late payment was that the flat address was not their home address, and that the Respondent should amend its records.

iv) the Applicants do not know, and can only speculate over, what may have become of any Notice of Intention supposed to have been delivered to the flat in March 2010. It may or may not have been passed to their agent by their tenant. It may have been thrown in the bin by the tenant. It may never have been delivered at all. They do not

know.

33. The facts that they were not "given" this Notice by personal service, that it cannot be proved that it came into their hands (in sufficient time or at all) if it was left at the flat and that we positively find that they did *not* receive it at that time, are sufficient to dispose of this point. For this further reason, we therefore find that the Respondent did not comply with the Regulations.

34. This may be considered unfortunate from the point of view of the Respondent, but it is appropriate in this context to quote the concluding remarks of Lord Justice Kennedy in the *Enfield LBC v. Devonish* case cited above:

"I know that this conclusion will disappoint the council as landlords, and it may be that consideration should be given to the possibility of at least some landlords, such as local authorities and housing associations, having special statutory authority to serve a notice to quit by sending such a notice to the relevant property if that be the last known address of the tenant, but until there is some such statutory provision local authorities might be well advised to heed what was said by Glidewell L.J. in the case of *Attwell* at page 542 :-

"The moral for landlords is clear. If they wish to render valid and effective service of a notice to quit by leaving it at the premises the subject of the lease, without proving it came to the attention of the lessee, they must :(1) make express provision for such a method of service in the tenancy agreement; and (2) prove the terms of the agreement in any action for possession following service of such a notice".

See also the observations of District Judge Neil Hickman, writing extra-judicially on accelerated shorthold tenancy possession proceedings in the *Law Society Gazette* of 18th January 2007:

"How is the notice [in this context, a notice seeking possession under the Housing Act 1988] to be 'given'? There is an urban myth that notices in connection with tenancies may always be served by putting them through the letter-box of the property. That is correct if there is a clause to that effect in the agreement, but not otherwise – *Wandsworth LBC v Atwell* (1995) The Times, 22 April"

Further notices, and the works

35. While the failure to "give" a valid Notice of Intention at the outset is fatal to any argument that the Respondent complied with the Regulations, we mention briefly below the further steps which were taken in this matter.

Stage 2: the "paragraph (b) statement"

36. The Respondent purported to serve on the Applicants, but again at the address of the flat itself, a "Statement of Estimates in relation to Proposed Work" in a letter dated 8th July 2010. This was intended to be in compliance with regulation 4(5) of the Regulations:

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9) -
(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out -
(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) a summary of any observations made in accordance with paragraph 3 and the landlord's response to them; and

(c) make all of the estimates available for inspection.

37. The same lack of evidence, uncertainties and defects as to service, and notice being "given", apply in the case of this letter. In any event, however, Mr. Vernon accepts that this letter did not comply with the Regulations in any event. The Respondent had obtained estimates, gave the figures for two of those estimates, "summarised" that

there had been no written observations received but only some verbal feedback which did not change its view, and gave an address for inspection of the estimates.

38. The notice would however have been defective, even if given, because while it arguably did "invite" the making of observations in relations to the estimates for the purposes of regulation 4(10)(b), albeit in fairly passive language ("You can give us your views and observations on any of the estimates.."), it then failed to comply at all with the further regulation 4(10)(c) requiring not just an address to which observations should be sent, but also specification [as in the case of 1(2)(d)(ii) and (iii) discussed above] that they must be sent within the relevant period and by a specified date. Paragraph 5 of the 8th July 2010 did not even attempt to cover either of those latter requirements.

39. The Respondent therefore tried again, some seven months later, with a letter of 15th February 2011. This letter was now correctly addressed to the Applicants, at their actual home address in Cwmbran, and they admit that they received it. Although headed "Notice of Proposal", what it is, in substance, is a second effort at a "paragraph (b) statement" for the purposes of the Regulations, sent because "it appears that some leaseholders may not have received.." the 8th July 2010 letter.

40. It therefore contained the figures for two estimates received, a summary of observations received (none save for some verbal feedback), and a proper invitation, with a date and period expressed, for observations on the estimates. The date expressed was 28th March 2011. It referred back to the 9th March 2010 Notice of Intention, but in the past tense as merely the first stage of the process which they were now about to complete.

41. For what it is worth, we accept Mr. Vernon's submission that this was, or would have been, an adequate "paragraph (b) statement" for the purposes of the Regulations. It covered all the matters required in that regard. But what it could not do was cure the defect of there not having been a valid Notice of Intention served on the Applicants in

the first place.

42. While it is now to some extent 'water under the bridge', we consider that in the light of the Respondent's correction of the Applicants' address, which enabled this letter to be sent to them effectively, and its own concerns about possible non-service of previous letters, the Respondent might have been wiser to start the whole process again with a Notice of Intention properly given to the Applicants at their correct address.

43. It did not do so. The works contract was, shortly afterwards, awarded to the lowest bidder, Central Group Roofing and Building Services. Their tender price for roof work to both Linton Court and Afon Court was £71,510, of which 50% (£35,755) would be apportioned to Linton Court. The selection of the lowest estimate removed the need for there to be a further Notice of Contract under regulation 6 of the Regulations [see reg. 6(2)].

44. The works were carried out between May and August 2011. In addition to the original estimated cost of the roof renewal works (including site set up costs, and measures necessary to comply with statutory requirements on health, safety and building regulations), the contractor also carried out with the agreement and on the instruction of the Respondent, further works by way of "variation" to the original tender.

45. Again, we have precious little in the way of detailed (or any) evidence about the course of these works. There is an unsigned and anonymous summary at tab 7 of the hearing bundle which offers some information, and Mr. Vernon was confined to relaying his instructions about what was done (and why it was done). In broad summary, what is said is that one job revealed, and made necessary, two other major jobs. When the roof was removed, it is said that this revealed that the plywood roof decking was in poor condition and would have to be renewed too. That cost £11,145.40 in relation to Linton Court. Secondly, it is said that it also became apparent that the fascias would have to be renewed or replaced, with some consequent

moving of aerials and dishes, for which £6054.76 was charged.

46. The Applicants Mr. and Mrs. Evans appear to have strong views about the quality and price of those additional works. They say that they were told nothing of them, and that if they had been, they are precisely the sort of matters on which they would have liked to make some observations and suggestions on how they could be done for a far lower price.

47. As we explained to them at the hearing, their application presently before the Tribunal was a challenge to the recoverability of service charge for these works based on a failure to comply with the consultation requirements. We did not have an application challenging the reasonableness of the need for, cost, or quality of any works; nor any evidence or material on which those matters could sensibly be determined. We indicated that, if their application based on the consultation requirements was unsuccessful, we might give directions as to how any further challenge of the amounts on these bases would be pursued. In the light of our findings on their principal application, that will not now be necessary.

48. A point might have arisen, however, as to whether those additional matters of the decking and fascias were in themselves separate and distinct "qualifying works", as to which separate and fresh consultation procedures would have had to be initiated (or else dispensation sought under section 20(ZA)). They certainly exceeded the statutory sum of £250 per tenant. There might have been argument, on whether as a matter of fact and "common sense" they were all part and parcel of the same single set of qualifying works (see *Martin v. Maryland Estates* [1999] 2 EGLR 53), or whether they should be "disaggregated" and viewed separately for statutory purposes.

49. In any event, Mr. Vernon for the Respondent made clear that the Respondent regarded and justified all these works as a single set, and would not have accepted or sought to argue that the two variations were separate sets requiring their own consultation process or else dispensation under section 20ZA. The consequence of that is that the

recoverability of service charge from the Applicants for these works stands or falls for them as one set of qualifying works. If, as we have found, the Regulations were not complied with, then the Respondent is prevented from recovering any more than £250 from the Applicants for all of the works.

50. That is our decision and the end position. Strictly speaking, it is not a decision that the sum of £250 (or any other sum) *is* presently payable and recoverable from the Applicants for those works; merely that by reason of non-compliance with section 20 and the Regulations, *no more* than that sum may be recovered.

51. Whether £250 or any sum is payable as service charge depends on whether a valid demand for service charge for these matters has been made. We were told of, but not shown, a letter of 17th September 2012 in which apparently a fresh demand was made and served on the Applicants, accompanied by the statutorily required Summary of Rights and Obligations. The Applicants were not sure that they had received that. Nor do we know whether the correct form of Summary was served. Those are not matters before us in this application.

52. Further, but perhaps in theory only, the Applicants retain the right to make a challenge under sections 19 and 27A of the Act as to the reasonableness and recoverability even of an amount of £250 per head for these works, although given that the actual invoiced cost of the works was nearly 20 times greater than that, such a challenge would face some difficulties. The Applicants might conclude that, as a result of this successful application, they have done well to have a new roof put on the building at a maximum cost to them of £250.

53. We add for the sake of completeness that we would have regarded a percentage charge levied by the Respondent on top of the invoiced costs of the works as something which was in principle recoverable via the service charge covenants, as the approximate internalised cost of project management in lieu of paying a surveyor or other agent to do that work instead. That would have been subject, as with other

items, to challenge on the basis of reasonableness under section 19 as to its amount. That is now unlikely to arise.

54. We therefore make an order in the terms attached.

Ewan Paton

Chair, Residential Property Tribunal (sitting as Leasehold Valuation Tribunal)

DATED this 19th day of December 2012

CHAIRMAN