IN THE MATTER OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LVT/0026/07/16

In the matter of Flats at Victoria Buildings, 3 Ashton Road, Prestatyn, Denbighshire, LL1 7ES

In the matter of an Application under Section 27A, 20C and 20ZA of the Landlord and Tenant Act 1985.

Applicants MRS ELIZABETH DAVIES &OTHER LEASEHOLDERS

-and-

Respondent VICTORIA APARTMENTS (PRESTATYN) LTD

Tribunal Members: Trefor Lloyd, Legal Chair
David Jones, Surveyor Member
Bill Brereton, Lay Member

The Applicants were represented by Counsel Mr O'Grady.
The Respondent was represented by Counsel Mr Huw Roberts

Decision

---

1. The Tribunal convened on the 26th September 2017 and initially inspected the Property in the morning at 10 am in the presence of Counsel for both parties and representatives.

Property Description

2. The subject premises comprise of a large detached building sited on a corner plot located just off the Town Centre and adjacent to the mainline railway station. The premises are currently used as a Public House to its Ground Floor and has 22 self contained Apartments to its two Upper Floors. The property was built c. 1900 as a Hotel, but was converted in the 1990's to provide apartment accommodation to the upper floors. The property has brick elevations which appear to be of cavity construction, under a slate clad roof and there are timber framed single glazed windows.

The Hearing

3. Prior to the hearing an application was made by the Applicants for the late inclusion of witness evidence in the form of a Statement Exhibit by a

Mr Gareth Jones, who in addition to being a leaseholder in respect of one of the flats, is also a Director of the Respondent Company.

4. As a consequence directions were made for the Applicants to confirm whether or not they wished to proceed with the Application and the Respondent to reply. The Applicants duly confirmed their desire for the Application to proceed and the Respondent replied objecting to the inclusion of the evidence. As the hearing date was imminent the Tribunal decided to defer the decision in respect of the witness evidence until the morning of the hearing, and the parties were informed accordingly.

5. At the outset of the hearing at the Meliden Community Centre (following the site visit), parties were asked to confirm the position as regards the extant Application.

6. Mr O'Grady confirmed that as a result of discussions with his opponent they had both agreed that if the Respondent be permitted to rely upon the witness evidence of a Mr David Carter they would not object to the evidence of Mr Gareth Jones being admitted. Bearing in mind the agreement between the parties, the Tribunal considered it appropriate to admit both Statements, and as a consequence in order for the Tribunal members to consider this evidence, a 30 minute adjournment ensued.

7. Following the adjournment Mr O'Grady for the Applicants opened his case. The Tribunal confirmed all members had read all the hearing documents (including the most recent Witness Statements admitted into evidence by agreement). Mr O'Grady went on to open his case as follows:
   (i) The Applicants' case was that if structural scaffolding was required in April 2015 the Applicants did not know at the time, and were not consulted as to whether it was structural scaffolding or not, and there had been no enquiry into companies as regards instruction of a design for the scaffold, if generally required.
   (ii) The evidence they were presented with was that the two quotes both represented structural scaffolding, whilst in reality the two quotes presented two different purposes.
   (iii) The scaffolding as erected would not prevent falling debris, and in any event there was no evidence of any debris falling from the building.
   (iv) The tying of the existing scaffolding onto the building with Hilti ties made the situation worse.
   (v) The Applicants accepted the scaffolding was needed to fix the walls, but it was put up in June 2015 and to date in excess of £30,000 has been incurred of wasted expense. Mr O'Grady referred to paragraph 72 of his Skeleton Argument as to the remedy the Applicants sought.

8. Mr Roberts for the Respondent in opening submitted that:

   (i) Victoria Apartments Limited ("VAPL") acted reasonably throughout in relation to the decision making progress on the basis of the information supplied by Warwick Estates.
   (ii) It was only in December 2015/January 2016 they became aware that the scaffolding did not provide any structural support, but in any event the scaffold as erected served a useful purpose since erected, as it protected the public, catching falling debris.
   (iii) Although it did not prevent a major collapse there was no evidence of such, and it was effective in excluding the public from a public area (being the smoking area for the public house), which was necessary and more effective than Heras fencing.
   (iv) The scaffolding was now being used for repair work started on the day of hearing. It had also been used to inspect and monitor any deterioration.
   (v) The scaffolding had led to a substantial reduction in the costs from the £250,000 estimated by Structural Solution as a ball park figure to £58,000.
   (vi) The scaffolding served a useful purpose, it was necessary, and the Respondent had not until the benefit of hindsight anticipated the matter would take so long to get competitive quotes.
   (vii) The costs were essential in the end and were reasonable. Had there been a structural scaffold it would have cost more and would need to have been replaced with the scaffold now in place when the repair work commenced.

Witness Evidence

9. The Tribunal heard evidence from Mrs Elizabeth Davies and Mr Gareth Jones for the Applicants and Mr Andrew Clifford and Mr David Carter for the Respondent.

Applicants' Evidence

Mrs Elizabeth Davies

10. Mrs Elizabeth Davies confirmed the content of her Witness Statement to be true to the best of her knowledge and belief. Upon being cross examined by Mr Roberts for the Respondent, she confirmed she had no expert knowledge or expertise in relation to the scaffolding answered the question by qualifying it and saying: "*The same as everyone else - we sought expertise*". She had very little involvement directly with Warwick Estates and VAPL. Her involvement was through Mr Gareth Jones and that Mr Jones was left to deal with the matter.

11. When asked about some of the content of her Statement she said she had been told the same by Mr Jones, and had not had much contact with the Respondent.

12. In relation to page 211 and the quotation for Heras fencing she confirmed she had obtained the verbal quotation based upon pictures sent and confirmed that the representative from Thorncliffe who quoted knew the building well, “it was an iconic well loved building”.

13. Mrs Davies confirmed that there was no public right of way into the area and to prevent access would simply involve shutting the gate and locking the door from the public house.

Gareth Jones

14. Mr Gareth Jones confirmed the content of his statement to be true to the best of his knowledge and belief. In examination in chief he explained his understanding as to the effect and significance of signing a Section 20 dispensation as being that all the money on the wall would be spent, this to include the price of the scaffolding and the quotation up to £250,000 and nothing would stop this expenditure being "*A free for all - blank cheque*".

15. Upon being cross-examined he confirmed:

    (i) there were three Directors of VAPL. Until May 2015 he had not had much involvement, and this was especially so as he lived in Manchester letting out his flat.

    (ii) He had a call in 2014 from Warwick Estates relating to a monitoring report, then no further contact until May 2015 when he received a call from Kieran Walsh. Mr Jones did not recall any talk of evacuation, but said *“ringing in my ear was the £250,000”*.

    (iii) He believed all was fine until September 2015 when after a meeting he called an acquaintance, a Mr Ben Badman who confirmed he could erect a scaffolding for £4,000 and thereafter a charge of £50 a week. He did not accept that Ben Badman had been slow in responding, stating that in his view it was Kieran Walsh who was slow in replying. In relation to the consultation exercise he was very worried and found himself as being "piggy in the middle". Following the 1st December 2015 meeting, Mr Jones became more involved with the matter having discovered after Ben Badman had attended the same meeting that the scaffolding was not structurally supportive.

    (iv) By the 18th December 2015 Mr Jones had started to do further work as he understood there was a need for a structural engineer and by January/February 2016 he had introduced NWPS of Rhyl to hold a meeting in January 2016 between David Carter, Mr Jones, Martin Thomas (a Surveyor for Admiral Taverns) and Deana Harrison. At the meeting it was Mr Jones' evidence that there was talk about investigating preventing access and putting up Heras fencing. In response the surveyor from Admiral Taverns Mr Thomas said "*scaffolding is staying that's final*" or words to that effect. Mr Jones felt outranked.

(v) Eventually they obtained what Mr Jones described as two decent quotes. When cross-examined in relation to the delay from August 2016 to September 2017 when works commenced, he agreed it was a lengthy period but the delay was not on his account. There was difficulty getting things paid and difficulty with Warwick Estates. The process took so long as there were a number of stages. Mr Jones' view was that there was no unreasonable delay and he agreed that the cost had come down. His recollection was that the other tender was £90,000 therefore the Home Energy quotation was far less.

(vi) When it was suggested to him that the scaffolding was needed for the Structural Surveyor's inspection and other work, and the suggestion that this could all be be done with a cherry picker was incorrect, he said he was not sure, "*I'm no expert to say that but other work had been done in the past*" therefore on balance he thought it was possible to use a cherry picker.

(vii) Mr Jones also gave evidence that the scaffolding now being used had altered a lot since June 2015 when erected, and was not fit to work on at that time. Tony from Pro-Scaffolding had made it safe by putting netting, erecting a loading bay, replacing some of the floor sections and inserting further Hilti ties.

(viii) Mr Jones agreed that there was some erection needed in order to do the work, but in his view in the last two years it had been over the top as it was only used for inspections, whereas a cherry picker could have been used. He compared the situation to using a *Rolls Royce to shop at Tesco's when you could do it with a Mini*, and maintained that the scaffold had served no purpose other than having the same effect as Heras fencing.

16. In response to questions from Mr Bill Brereton he confirmed he became a Director in 2009/2010, and had one letter from Warwick Estates to introduce themselves. He and Kate were Directors of VAPL because they were residents and leaseholders. He as a Director was the conduit of information to the leaseholders and he chatted with them. He had phone calls and emails with Warwick Estates. There were never, for example, monthly meetings. He was not empowered, it was an informal arrangement. Warwick Estate advised and they followed this advice.

17. When asked by the Tribunal Chair he confirmed that he had orally asked for the scaffolding to come down and Mr O'Grady referred the Tribunal to page 148a which is an email which pre-dates the meeting.

Respondent's Evidence

Andrew Clifford

18. In examination in chief, he confirmed the role he took was to attend meetings but he deputised work and contact with leaseholders to Mr David Carter. The other Director of VAPL was hardly ever involved. He confirmed that he had put forward all recommendations. Warwick Estates was a Property Management Company they had selected in 2009 to manage property, they were the experts in the field, had a track record, and he deferred to their expertise.

19. When cross-examined he confirmed VAPL were aware of the gable issue, became aware for the first time some time in 2012. He was unable to comment on the gap between the Eyton Richards Report and the instruction of Structural Solutions. He did not know why Eyton Richards were no longer instructed or why as per the recommendation (page26) for quotes were not received.

20. With reference to the third paragraph of the letter from Warwick Estates (page 132) he denied that VAPL was run as a subsidy of Admiral Taverns, but conceded in respect of VAPL only three meetings had been arranged in a decade. There had been no company meetings since the Application, no minutes of the Board, Orders or Resolutions. He had in fact not met Mr Jones, his fellow director, until the day of this hearing.

21. He maintained there was a high health & safety risk of people entering the area including trespassers or others, and that as the public house was let there was no day-to-day control in order to ensure the gate would be locked. The concern was in relation to the public at large, and not simply the effect on the public house.

22. He denied the risk was limited to one end in relation to the flats and all of the public house (ground floor) premises. He confirmed he never received the two quotes at pages 138 and 142 and accepted they offered two quite different solutions, but the decision was made to fund a solution due to the urgency and health & safety issues. He stated that he thought the company was ending up with the same thing by accepting the Amro quotation, but accepted that had he read them it would have been clear to him that both solutions were different.

23. At no stage did he think that the scaffolding needed a design, he assumed it had been done. He was no expert in scaffolding, but with the benefit of hindsight it looked as if Warwick Estates could be criticised. They had empowered Warwick Estates to provide advice and they were the experts in the sector. This was the only residential block of flats Admiral Taverns had. It was an operator of some circa 850 pubs by way of lease.

24. When asked why he did not see fit to inspect the site himself, bearing in mind he was working part of the week in Chester only an hour away, and he was to personally sanction spending, he said that he did not, but that David Carter attended the meeting in December. He accepted no masonry had fallen, but that was in hindsight.

25. In relation to the requirement to consult, he said that he had to defer to Warwick Estates. His recollection was that there was talk about the need to have a consultation at the time of the scaffolding. It was deemed urgent, but latterly he thought there had been mention of consultation.

26. He accepted when questioned that the £250,000 guideline from Structural Solutions was "*Over egged*", but that the Directors' urgency was to protect the public. When put to him that spending £35,000 did not prevent a collapse of the wall, he answered it could provide some support and thought that Warwick Estates had dealt with the leaseholders.

27. He was then cross-examined in relation to the Articles of Association of the Company and the suggestion put to him that the effect of the Article was that Admiral Taverns could have the benefit of 66 votes, and this was the reason why there had been no consultation. Mr Clifford candidly answered by saying that he did not understand the point. It was a legal point.

28. When questioned by the Tribunal Chair as to whose fault it was as to the delay, he said it was a collective responsibility of VAPL and Warwick Estates.

David Carter

29. Mr Carter in examination in chief confirmed that he had met Gareth Jones twice after the initial meeting and at a second meeting Deana Harrison was there as well. On the 5th February 2015 he met together with Martin Thomas and discussed the S P Project's view and thereafter returned to Victoria Apartments to discuss and move matters on. He accepted there was discussion to potentially change the type of scaffold and his recollection was that there was never discussion about taking down the scaffolding in isolation, but a smaller scaffold being put up instead. Mr Thomas the surveyor was more concerned that any interference with the distressed area would cause more damage.

30. He said that it latterly became apparent that Mr Phil Hughes was not able to design a scaffold. There was an urgency for support and he was asked to provide a list of recommended contractors. This was done and followed up. He spoke to Philip Tidswell from Elmwood with the scaffolding in place and by January 2017 it was decided not to pursue structural scaffolding, but to change tack. There had been an informal

tender process and the best three were asked to formally tender. Warwick Estates ran the Section 20 consultation process.

31. When cross-examined as to the email exchange in relation to Warwick Estates continued involvement and whether or not he had, in the light of what had occurred, gone to seek an alternative, Mr Carter confirmed Warwick Estates was under review, there had been a meeting with leaseholders to discuss. When put to him Warwick Estates had not provided great service, he said that they had stuck with what they had got to try and get through the process, but no-one had asked him to get rid of Warwick Estates.

32. By reference to page 124, Mr Carter's evidence was that Eyton Richards had formed the view the movement was structural rather than thermal inferring that prior to that date they had simply thought the causation was thermal issues. He could not recall disclosing the report to Mr Clifford, but recalled speaking to Kieran Walsh about it and when Eyton Richards terminated their involvement they went to Structural Solutions.

33. He stated that there was only one meeting with the leaseholders in the last five years and accepted there was no talk of collapse in the Structural Solutions' report (page 29), but still maintained that it was a genuine concern despite it being put to him that it was to say the least coincidental that it came at the same day as the ball park figure. He accepted the public house would have to close if the wall had collapsed and maintained it would be dangerous and irresponsible not to have a scaffolding, and closing the gates or barrier would not work. He however accepted that scaffolding at head height could hold back debris, but maintained that he believed at the time they were commissioning a structural scaffold.

34. When cross-examined on the quotations (138 and 141) he said that he saw two solutions, two options that were fit for purpose, but only in December did he realise and was shocked that it was not a structural scaffold. He accepted in hindsight he possibly failed to oversee his management role, but maintained he was looking to the expertise of Warwick Estates as his experience was in pub valuation. He had no idea why an Admiral Tavern Director was a Director of VAPL, it was before his time.

35. The decision was taken quickly and he was not aware of the Section 20 process until now. Mr Thomas the Surveyor did pub refurbishments but was RICS qualified. The decision on the scaffold was one of "*Everybody's*". He accepted there was enough time from the report of the Structural Solutions and the scaffolding quotes for a full consultation, but assumed Kieran Walsh was dealing with that.

36. When questioned by Mr David Jones he confirmed:
    (i) the insurers were aware of the problem and insurance cover had been renewed upon that basis and there were no further enquiries from the insurers.
    (ii) The Local Authority was not involved, there had not been any discussions between the Local Authority and Warwick Estates.

37. He agreed it was not ideal that:
    (i) There were three Structural Engineers involved, six contractors and six scaffolding companies.
    (ii) He also agreed that a 24 month delay from June 2015 to today was not ideal for work
    (iii) He stated that in his view he had agreed with Kieran to the scaffold as it was an emergency situation.

38. There was then a short adjournment before closing submissions. The parties were asked to directly address the Tribunal in relation to Section 19 Reasonableness in conjunction with Section 27A Liability to Pay Service Charge and Section 20C Limitation of Service Charge of Proceedings.

39. In addition the parties were asked to consider Section 20ZA in the light of the fact that whilst there was no indication in the Witness Statements for the Respondent that dispensation would be sought it had been specifically raised by Mr O'Grady in his Skeleton Argument and indicated by Mr Roberts as a live issue at the beginning of the hearing.

40. As a consequence the Tribunal adjourned whilst the parties were invited to discuss amongst themselves whether or not the actual issue of dispensation was still a live issue, or whether they simply wanted the Tribunal to consider any issue of quantum.

41. The parties returned and Mr Roberts confirmed that Mr O'Grady was in agreement and was not taking the point as regards the actual issue of dispensation itself, but simply the quantum.

Respondent's Closing Submissions

42. Mr Huw Roberts dealt firstly with the Reasonableness. He submitted that it was common sense that scaffolding or some scaffolding was necessary. The Respondent had thought they had sought structural scaffolding in May 2015, but concede the scaffolding as erected does not structurally support. In any event VAPL had not paid for structural scaffolding, but paid AMRO for the scaffolding that was there.

43. To a lay person in the circumstances the AMRO quotation was misleading, although it confirmed no buttressing it did not say the scaffold was bereft any structural support, and the reference section to the letter indeed specifically stated Scaffold Support.

44. It has been in place since June 2015 to date and if, which he was not inviting, there was anything unreasonable it was the length of time the scaffolding was there which could be reduced to reflect the delay. Although the process to the date work started had been longer than anticipated it was for the reasons explained. It was a difficult process, reports, quotations and schedules of work had to be obtained before work could be started.

45. Scaffolding in the meantime served a useful purpose. The initial cost (page 139) of £4,845 plus VAT would have been incurred in any event. That provided 12 weeks cover of scaffolding. Hiring a cherry picker would not necessarily be as efficient and the evidence on that was unsatisfactory. In terms of protection the scaffolding as erected provided some function. It excluded the public, it provided some overhead protection to falling debris.

46. In relation to the alternative Heras fencing, there is a dispute in the evidence between Gareth Jones and David Carter. David Carter only recalled mention of replacing the scaffold and not removing it. The fact that Gareth Jones had not mentioned Heras fencing in his Witness Statement undermines his evidence. Over time he could well have become confused. Heras fencing was a reasonable alternative. There would always be a risk from vandals, children climbing over access from inside the public house.

47. The Scaffold was used by contractors to inspect. In June 2016 Philip Hughes and the contractors removed brickwork to enable the report (page 194) to be commissioned. Mr Tidswell went to repair the roof using the scaffold and Home Energy Project used the scaffold. Mr Cox and others used the scaffold to carry out surveys and it enabled quotations and essentially rendered a reduced cost from the May 2015 e-mail ball park figure to Warwick Estates of £250,000.

48. A suggestion that this was simply an attempt to frighten the Respondent was not proven and in any event Structural Solutions did not tender for the work. There was pressure on Warwick Estates and VAPL to take quick action, hence this was an emergency situation. Once the scaffold was erected there was substantial cost incurred dismantling it, and erecting a further one would make no sense as it was not known when the work would start. Criticism of VAPL not effecting structural scaffolding following the Philip Hughes report was not due to ignoring advice, steps as referred to by Mr Clifford and Mr Carter were taken and the decision was taken in January 2017 to progress works. There was no decision taken to take down, only to replace.

49. In terms of the issue of dispensation, this was not opposed, the issue was quantum. Mr Roberts referred to paragraph 72 of the Skeleton Argument of Mr O'Grady and submitted the initial cost of the scaffolding should be paid in full, and in relation to the ongoing monthly costs, the project simply took longer than anticipated for reasons explained. Had a

structural scaffold been put in place that would have cost more, and in the round there was a significant saving in the cost of the works when the tenders were considered.

50. In terms of the cost of proceedings and the question of being just and equitable, Mr Roberts submitted it was dependent on the decision of the Tribunal. It was reasonable for VAPL to have a full reimbursement of its costs, as it was reasonable for it to contest the quantum of the service charge.

Applicants' Closing Submissions

51. Mr O'Grady made reference to his Skeleton Argument and accepted that the scaffolding was necessary for the work. The Tribunal interjecting at that stage to ascertain from the parties how long the repair work would take. There was agreement between the parties that it was a three week period.

52. It was accepted and conceded for the Applicants that £5,800 would be due in relation to and with reference to the estimate from Contractor 2 (page 147) and that this was the only figure to be taken away from the full cost of circa £34,000.

53. In his submissions relating to Reasonableness, the evidence was clear regarding quantum and consideration of the J R Scaffolding and AMRO quotes, the outcome was not only unreasonable but irrational. He referred the Tribunal to paragraph 23 of his Skeleton Argument in relation to reasonable standards. He submitted that VAPL's trust in Warwick Estates was misplaced trust. The delay was at the door of VAPL and Warwick Estates. He also referred the Tribunal to paragraph 25 of his Skeleton Argument and maintained VAPL was run but not a bona fide company, it was a company in name only. One Director Mr Pearson had no involvement. Mr Carter had accepted in his evidence that Mr Pearson and Mr Clifford acted on his recommendation for all intents and purposes. Mr Clifford was in fact a Director of VAPL.

54. The Tribunal was invited to accept that whilst it was a matter of concern, not a matter of urgency, the five week delay between receipt of the quote from J R Scaffolding and Amro was enough time for the lessees to be consulted. There could have been a truncated process by way of an Application for dispensation and in that regard he referred us to paragraph 64 of his Skeleton.

55. He then addressed the Tribunal on the authority of ***Daejan*** in relation to prejudice, making the point that the Applicants had been prejudiced in not seeing the report and quotation.

56. The prejudice in this case being the inability to make the point now accepted by the landlord VAPL that there should have been a proper specification, scaffolding and they should have got on more quickly with the matter than taking over two years.

57. In terms of the just and equitable test and Section 20C, he maintained VAPL should have made a Dispensation Application. The Respondent failed to make a Dispensation Application when there was no good reason not to follow the regulations, or even try to deal with them retrospectively, and therefore the costs should not be allowed as part of the service charges. He further submitted the prejudice was the leaseholders not having the opportunity to carefully examine the precise quotation, but that simply VAPL went ahead to spend their money.

58. Mr Roberts sought the Tribunal's permission to make one last submission, which was granted. He submitted that the sum contended for in the Philip Hughes' report believed to be £1,200, (although it is worthy of note no invoice appears in Bundle), should be allowed as that report formed the basis of the Works Schedule and was not limited to passing comment on the scaffold.

The Law

59. Section 19 of the Landlord & Tenant Act 1985 ("the 1985 Act") places limitations on the recoverability of service charges on the basis of reasonableness.

60. Section 27A of the 1985 Act provides the Tribunal with power to determine the amount of service charge payable in respect of costs incurred relating to repairs and maintenance.

61. Section 20 of the 1985 Act provides a requirement of a consultation in respect of qualifying works if a leaseholder is expected to pay more than £250.

The Detail

62. The Consultation procedure to be followed is set out in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 SI 2004/684 ("The Consultation Regulations").

63. By virtue of Regulation 6 of The Consultation Regulations, in the absence of a valid consultation, the amount that the freeholder can lawfully recover from the leaseholder for work is capped at £250.

64. Section 20ZA of the 1985 Act provides the Tribunal with power to dispense with all or any of the consultation requirements in Section 20 and The Consultation Regulations if it considers it reasonable to do so.

65. The Supreme Court in ***Daejan Investments Limited -v- Benson [2013] UKSC 14*** provides guidance as to how the discretion under Section 20ZA should be exercised, confirming that:
    (i) The purpose of Sections 19 to 20ZA was to ensure a leaseholder was not required either to pay for unnecessary or defective services, or to pay more than was necessary for services to an acceptable standard.
    (ii) In the circumstances when considering a Section 20ZA(1) Application the Tribunal has to focus upon the extent of prejudice as a result of any failure to comply with the consultation requirements. Further, it was hard to see why dispensation should not be granted where the failure to comply had not effected the extent, quality and cost of works.
    (iii) Compliance with the requirements was not in itself an end and dispensation should not be refused simply by reason of a serious breach. The prejudice flowing from the breach was the main and usually only question for the Tribunal.
    (iv) Where the Tribunal was considering prejudice, the legal burden would be on the Applicant (ie the party seeking dispensation from the consultation requirements), but the factual burden in terms of identifying a relevant prejudice would fall upon the Respondents (to the Application of Dispensation). Once the Respondent (to the Application for Dispensation) have shown a credible case for prejudice, it is for the Applicant to rebut the same.

66. In relation to the Application under Section 20C. Section 20C of the 1985 act provides:
    (1) "*20C(1) a tenant may make an Application for an Order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Court, Residential Property Tribunal or Leasehold Valuation Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the Application.*
    (2) *The Application shall be made:*
        (a) in the case of Court proceedings, to the Court before which the proceedings are taking place or. if the Application is made after proceedings are concluded, to a County Court;
        (aa) in the case of proceedings before a Residential Property Tribunal to a Leasehold Valuation Tribunal.
        (b) in the case of proceedings before a Leasehold Valuation Tribunal, to the Tribunal before which the proceedings are taking place or, in the Application is made after proceedings are concluded, to any Leasehold Valuation Tribunal.
    (3) The Court or Tribunal to which the Application is made may make such Order on the Application as it considers just and equitable in the circumstances".

67. In accordance with Section 20C of the 1985 Act, the Tribunal may make such Order as it considers just and equitable in all the circumstances and a number of cases provide guidance in this regard.

Findings and Conclusions

68. Bearing in mind as aforesaid the Applicants do not take issue with the Respondent's Application on the day of the hearing for dispensation in respect of the consultation requirements as is permitted under Section 20ZA of the 1985 Act, the Tribunal proceeded upon that basis.

69. As was clear from the respective closing submissions, the only issues remaining for the Tribunal are:
    (i) that of reasonableness (Section 19 of the 1985 Act) and combined with that, if the subject matter of the works claimed for, i.e. the scaffolding was reasonable, then the amount payable by virtue of Section 27A of the 1985 Act.
    (ii) The Applicants' Section 20 C Application

70. In closing, Counsel for the Applicants conceded that scaffolding was required, and whilst slightly departing from his Skeleton Argument accepted that a sum of £5,845 was the appropriate sum, but that the costs of the Applicants in preparing for the Tribunal in the sum of £1,500 together with the cost of the report of Philip Hughes believed to be £1,200, was to be deducted.

71. Dealing with the matters in turn:

Section 19 - Reasonableness

72. The Tribunal finds that there was a total lack of consultation between Warwick Estates and the Leaseholders. Whilst Warwick Estates were the appointed agents, that did not absolve the Respondent of its legal requirements. It was incredulous in the Tribunal's view that Warwick Estates had a total disregard for the consultation process. The e-mail correspondence from Mr Kieran Walsh dated 4th December 2015 (at page 149) was illuminating as regards the misunderstanding of, and the total disregard for the statutory process.

73. In the circumstances the Tribunal finds that whilst there was a deal of urgency as was conceded by Mr Carter in cross-examination, the total cost of the scaffolding to date being somewhere in excess of £34,000 (figure taken from page 174) was totally unreasonable.

74. The manner by which the Respondent sought to deal with the matter was at best disjointed and led to a significant delay.

75. Although there was some force in the argument of the need to ensure that the courtyard area to the public house premises to the side was safe in terms of any lawful visitors, (i.e. public house customers) or

trespassers, the extent of scaffolding as erected was not reasonable. Heras fencing could have equally prevented access and made the area safe. Nevertheless, the scaffolding as erected did provide in the Tribunal's view some limited protection. That benefit was clearly however limited by the simple fact that in order for works to commence, and to afford a greater deal of protection netting had to be put onto the sides of the scaffolding and that work was only commenced at the date of the Tribunal's visit.

76. Accordingly, in the Tribunal's view in order to simply protect the public by way of scaffolding it would not have been necessary to erect a scaffolding which consisted of a number of lifts. A single lift in the area of the defective masonry would have sufficed.

77. There was some force, however, in the argument that as is conceded by Mr O'Grady for the Applicants that a scaffold would have been required in the end. Had a structural scaffold been erected, the evidence before the Tribunal was that the same would need, in any event, to have been taken down and a scaffolding suitable for working (which is what was present at the site visit) would thereafter be required.

78. Taking all the evidence into account and mindful of the answers given by the respective witnesses in cross-examination, the Tribunal finds that whilst it was reasonable for a scaffold to be erected the total sum contended for by the Respondent is unreasonable. Bearing in mind the consensus between the parties at the hearing that the works would take some three weeks to complete, the figure of £4,845 plus 20% VAT total £5,814 being the AMRO cost is reasonable. That cost as is detailed in the quotation at page 134 provided for a 12-week initial hire period. The Tribunal considers that would have been more than adequate for the works to be completed.

79. Although it is submitted by the Respondent that there was a significant cost saving as a result, the final quotation for the actual works being £58,000 as opposed to £250,000, the Tribunal finds that the £250,000 was very much a ball park figure and not a specific tender.

80. In relation to the cost of the Structural Engineers Report it is unclear from the Skeleton Argument upon which basis the Applicants seek to recover that against the cost of the scaffolding. It is clear from the evidence that the Report did not provide any detail as regards a structurally supporting scaffold being erected, but formed the only basis for the subsequent specification/tendering process that resulted in the contract being awarded and the works commencing.

81. In the circumstances the Tribunal finds that it was inevitable that a Structural Surveyor/Engineer would need to be instructed and in the premises find that the cost of the report in its entirety being £1,200 is a reasonable cost.

82. In conclusion therefore the Tribunal finds that the total amount in respect of the dispute between the parties which is reasonable is the sum of £7,014 inclusive of VAT.

83. Whilst, as referred to in more detail in relation to the Tribunal's decision in relation to the Section 20 Application below, the Applicants have succeeded to a great extent, they did not until the day of the hearing indicate that the real issue related to quantum. In the circumstances the Tribunal does not consider in all the circumstances that any costs incurred by the Applicants (estimated at £1,500) should be deducted from the total amount payable as determined in paragraph 83 of this Decision.

Section 20C Application

84. Having considered the matter in the round, the Applicants have been successful in significantly reducing the sum contended for by way of service charge. For the reasons as set out in this Judgement, it is the Tribunal's view that the conduct of the Respondent throughout, if not the sole cause, contributed significantly towards the fact that the costs for the scaffolding were in excess of £34,000.

85. Whilst there is some force in the submission by Counsel for the Respondent that it was only on the day of the hearing that the Applicants made it clear they were prepared to countenance any payment towards the scaffolding having regard to all these matters and the fact that the Applicants succeeded to a great extent, the Tribunal considers that an Order under Section 20C would be appropriate.

The Decision in Summary

86. For the reasons set out above the Tribunal determines that the sum of £7,014 is the appropriate sum payable in respect of the charges, the subject matter of the dispute between the parties, being the cost of scaffolding and the Structural Engineer's fees.

87. An Order under Section 20C of the Landlord & Tenant Act 1985 be applicable in relation to this matter.

Dated this 17th day of November 2017

Trefor Lloyd
Chairman