

IN THE FIRST TIER TRIBUNAL – PROPERTY CHAMBER

FTT REFERENCE: LON/00AW/LSC/2016/0115

LANDLORD & TENANT ACT 1985 – SECTION 27 A(1)

OCTRAL No. 201701/003

PROPERTY: POINT WEST BUILDING, 116 CROMWELL ROAD, SW7 4XA

APPLICANT: POINT WEST GR LIMITED

RESPONDENT: LEASEHOLDERS AS SHOWN ON THE APPLICATION

SCOTT SCHEDULE

	DESCRIPTION OF ITEM	COST ESTIMATE	TENANT'S CHALLENGE	PROPOSED SUM	LANDLORD'S RESPONSE	TENANT'S FURTHER SUBMISSIONS	TRIBUNAL COMMENTS
1	Item 24: Glazing Repairs and Replacements (W, S, Tower, E N and Light well)	£600,000	<p>The works to the curtain walling arise out of an inherent defect and the cost of the works are not recoverable through the service charge.</p> <p>Alternatively as a result of agreement reached between the Lessee of Apartment 1601 and the Respondent's predecessor in title any liability on the part of the Landlord to repair the curtain walling was discharged."</p>	Nil	<p>(a) The majority of these proposed works relate to the curtain walling in the Lightwell affecting Penthouses on the 10<sup>th</sup> floor and above. The costs estimate does not include any works for the replacement of curtain walling at 1601.</p> <p>(b) The Tenant has given no reason why the Landlord does not have to comply with its obligations under the lease to repair / replace the</p>	<p>(a) Our challenge was to 'works to the curtain walling' . You have replied by referring solely to works of 'replacement'.</p> <p>Accordingly the Tenants' challenge still stands.</p>	

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					<p>curtain walling around W, S, Tower, E, N and the Lightwell.</p> <p>(c) The only objections raised are that work to curtain walling is an inherent defect and an agreement exists between the Lessee of 1601 discharging any liability for the current landlord to repair any curtain walling.</p> <p>(d) Please can the tenants provide the</p>		

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					evidence on which they rely to support their contention that the proposed works to the curtain walling arise out of an inherent defect.  (e) If the tenants do provide the evidence requested in point (d) above can the Tenants explain, with supporting evidence / authority, why this means that the costs of repairing / replacing the curtain walling are not recoverable via the		

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					service charge.  (f) Please can the Tenants provide a copy of the alleged agreement between the lessee of Apartment 1601 and the Landlord's predecessor in title to which they refer.  (g) if the Tenants are able to provide the agreement referred to in (f) above then please can they provide the legal authority on which they rely in support of		

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					their contention that it is possible for a landlord of a multi-let building to enter into an agreement with one tenant of the building which discharges its liability to repair in all the other leases of that building and which also discharges the liability of all the other Tenants to contribute to the service charges.  (h) For the avoidance of doubt, it is the Landlord's position		

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					that the proposed works are necessary in order to comply with its obligations in clause 6(4)(a)(i) of the various flat leases. The works proposed are for maintenance/repair works only and not for replacement of the curtain walling to 1601.		
2	Item 27: External Elevation	£750,000	To the extent that this item includes any works connected to the curtain walling structure and inherently defective parts	Nil	The repair works proposed in relation to this item do not relate to curtain walling. Where		

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	Repairs (W, S, Tower, E N and Light well)		or works quantified as part of the purchase discount, the same challenges are repeated.		relevant the landlord also repeats its comments in relation to item 1 above.		
3	Administrative Fees		No estimate of such fees is shown. These need to be set out clearly so as to ensure that there is no multi-layering of fees over and above the substantial management fees already charged to tenants.	Further details required	(a) This application relates to a 10 year capital expenditure plan. It is unrealistic to be able to set out clearly all administrative fees over that period.  (b) The landlord has no intention of "double charging".	(a) This application relates to the collection of reserves in advance. If it is unrealistic to set out the fees, they should be left for collection in the appropriate year/s (perhaps	

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					(c) Any administrative fees not within the day to day management fee would be charged at a competitive rate.	at Section 20 consultation stage) when a more realistic estimate can be presented to the tenants.  (b) We note the undertaking that there will be no double-charging of management fees over and above major works fees.  (c) We reject any administrative fees above and	

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						beyond agreed contract administration by the relevant surveyor or consultant managing the works projects, save for the cost of serving Section 20 notices by the management office for which the Respondent tenants are prepared to listen to a proposal of office costs.	

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						(d) The professional work should be tendered amongst suitably-sized and qualified firms best suited to the projects, one of which should be nominated by the tenants, or their recognised association, PWLA.  (e) The Respondent tenants do not believe any of the	

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						<p>works specified in the programme are so specialist as to be beyond the capability of a choice of good surveying firms and consultancies. Our reasonable proposal in (d) above stands.</p> <p>(f) The tenants do not accept the proposal to instruct Mr Nicholson (whether as a sole practitioner</p>	

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						or under his trading name of Prime) because of his relationship with the landlord and the conflict of interests already set out in the prior FTT application and they will not accept an hourly rate as proposed. Instead all this work, specialised or less, should be fairly tendered amongst suitable firms (including	

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						<p>those nominated by the tenants) at a fixed rate for the job. There are potential fees of £1m involved for which the tenants want accountability, transparency and impartiality.</p> <p>(g) The tenants do not accept any liability for the costs of this application by the landlord.</p>	

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4	Professional Fees		No estimate of such fees is shown. With a base estimated cost in excess of £8m the tenants want to see the professional role competitively tendered with a selection of suitably qualified and comfortably insured building surveyors (or M&E consultants where appropriate to the project). The tenants will NOT accept the appointment of the landlord's own surveyor either as a 'jack of all trades' or by dint of his conflict of interest alleged	Further details required	(a) This application relates to a 10 year capital expenditure plan. It is unrealistic to be able to set out clearly all professional fee estimates for that period. (b) the 10 year capital expenditure plan includes specialist areas of work which will need to be project managed. c) the Professional fees will be charged	(a) This application relates to the collection of reserves in advance. If it is unrealistic to set out the fees, they should be left for collection in the appropriate year/s when a more realistic estimate can be presented to the tenants. (b) Agreed but see below.	

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			by the tenants.		within the usual industry percentage bands for the professional. All contractors will have the necessary expertise in respect of the particular work being undertaken.  (d) the more specialist the area of work the higher the percentage fee is likely to be.  (e) the intention is where possible, that 2/3 contractors will be asked to quote	(c) The professional work should be tendered amongst suitably-sized and qualified firms best suited to the projects, one of which should be nominated by the tenants, or their recognised association, PWLA.  (d) It is agreed that where a design input is required (such as	

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					<p>unless the work is so specialist that the landlord is unable to identify that many sufficiently qualified contractors.</p> <p>(f) for less specialist areas the work will be project managed by Derek Nicholson (not Prime) at a competitive rate which is currently £60 p hr + vat. This is approx. one third of the cost of the former project manager (David Bedford) used by the</p>	<p>for the remodelling of interior parts) the fee might be up to 10% overall, but for the main building works it should be no more than 8% subject to the competitive tendering indicated above.</p> <p>(e) This is about professional fees, not contractors. However, we would expect the appointed</p>	

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					<p>previous landlord, who's fees were not disputed as being unreasonable.</p> <p>(g) the legal and professional fees associated with this application would not be included and are currently estimated at £105,000 if this is challenged to full hearing.</p>	<p>contract administrator to nominate suitable firms from his/her knowledge and experience of similar successfully completed projects as well as those nominated by the landlord and tenants as proposed in (c) above.</p> <p>(f) The tenants do not accept the proposal to</p>	

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						or less, should be fairly tendered amongst suitable firms (including those nominated by the tenants) at a fixed rate for the job. There are potential fees of £1m involved for which the tenants want accountability, transparency and impartiality	