NEWS ON THE BLOCK
HELP AND ADVICE FOR FLAT OWNERS
www.newsontheblock.com

Major Works 2012 Feature

Your essential guide to major works

Major Works »

Your essential guide to major works. Independent industry practitioners offer some advice in our comprehensive pull out and keep supplement about major works.

SERVICE CHARGES

CONSIDERING YOUR MAJOR WORKS PROJECT?

Nicholas Kissen offers a few cautionary words to resident companies

The roof needs repairing. It is many years since this was done and the law has changed so much since then. The same goes for painting the outside walls and the interior common parts. The lease says this should be done every seven years and the deadline is looming.

How do you ensure you keep within the law and not find yourself out of pocket?

Hopefully you foresaw these works were coming and over the years, had accumulated a sinking fund to cover all the costs.

But maybe this is over-optimistic. The lease may be ancient and may not provide for such a fund. Or one was not established at all. Worse still, money was set aside each year to go into the fund but it is still not enough to pay for the works.

If the money is not there then follow the basic drill-

1. Check that the lease entitles you to ask for payment in advance of the work being done. Without such a provision you will be left having to do the works and trying to recover the costs from the flatowners afterwards.

2. Ensure that any demands for payment are accompanied by a summary of rights and obligations in the required format, with the prescribed wording. Until this has been done, the flat owner can withhold payment even if they have received the demand.

3. Do not on any account overlook the requirement to consult under Section 20 of the Landlord and Tenant Act 1985 (as amended) even if there is enough money available in the sinking fund, unless the LVT have granted dispensation.

Nicholas Kissen is a Senior Legal Advisor with The Leasehold Advisory Service

To read the extended version of this article, visit NewsontheBlock.com

Major Works »

TOTAL 2011 PLANNING PERMISSIONS GRANTED IN ENGLAND LOWEST SINCE SURVEY STARTED IN 2006.
Source: HBF (Home Builders Federation)

SERVICES

UPGRADING BROADBAND AS PART OF MAJOR WORKS PROJECT

Brian Doherty says you should consider installing other services too

IT'S UNDERSTANDABLE why the phrase "major works" can strike fear into the heart of the most experienced property manager. But when there is work to be done the best approach is to think about how you can use this opportunity to install other services in order to plan for the future and maximise the return on the disruption. One area that may not have initially come to mind is broadband installation.

Today, broadband is one of the fastest moving industries in the world. The consumer appetite for speed and bandwidth is insatiable as the digitisation of content takes hold – we now live in an age where all market sectors are moving online, from retail, to music, to TV. And consumers expect instant access.

Previously the issue of broadband wouldn't have even been on a property manager's agenda, but times are changing. Broadband connectivity is increasingly becoming a resident's association issue. In a recent survey 57% of buyers said they'd pay more for a home with a better online connection and many are looking at connectivity as a key option to future-proof their property and add long term value. People are quickly realising that the copper infrastructure can't cope with their online demands and are turning to fibre to satisfy their current and future needs.

For the property manager this presents a huge opportunity, as they can go one better. There is now an option to plug fibre optic broadband straight into the premises – which will enable residents to choose whatever package suits their needs, all the way up to unprecedented speeds of 1 Gig. Installation is incredibly simple and is even easier if it's done in tandem with other works – whether upgrading an IRS, cabling work or even a standard refurbishment.

> "Today, broadband is one of fastest moving industries in the world"

The process for fitting the building with fibre can be quickly achieved via a two stage process. The first is to plug fibre optic cable into the existing building ducts and then take the cable up the risers to each floor and across the ceiling voids. This work can normally be achieved in a matter of weeks. The next stage is to fit the connection in each flat in a position the end user prefers. Upwards of ten to fifteen installations can be done per day.

The installation costs are negligible. In addition to resident benefits, fibre-to-the-premises can be hugely advantageous for building services. The property manager can look to leverage the connectivity via a host of exciting applications – IPCCTV, smart metering and door entry systems to name but a few – which will immediately give a ROI on a fibre-to-the-premises project.

Brian Doherty is Director of sales and marketing at Hyperoptic

Why waste heat? Improve your property heating

With uncertainty around future fuel costs, focusing on how to reduce fuel bills and make cost efficiencies is never far from our minds.

By reducing fuel costs you can also achieve carbon reductions, and property managers are pivotal to making this happen. The best way to start is through installing energy efficiency solutions.

Valve insulation provides a chance to improve the energy efficiency of your building, and appeal to your tenants by giving them what they want – lower fuel bills. It also reduces the temperature of the boiler rooms and may improve the well-being of residents living in flats adjacent to communal boiler installations. You can also show leadership in this space through acting early and enjoying the prestige and positive media attention that comes with demonstrating a commitment to carbon reduction.

Sustain have fitted valve insulation in over 9,000 boiler rooms which has reduced energy bills by £140million in total. Along with valve insulation, Sustain offer fully managed loft and cavity wall insulation suitable for blocks of flats and stand alone housing stock.

We provide a free no obligation quotation to landlords, that will include all the costs with no hidden fees or charges as well as the predicted energy and carbon savings as a result of the work.

To arrange for your individual survey and to see how much your building could be saving, please call Adrian Newton on +44 (0)1934 864 824
Email adrian.newton@sustain.co.uk
www.sustain.co.uk or
http://solutions.sustain.co.uk

sustain

Cavity wall, loft and valve insulation for private residential buildings

Valve insulation for residential buildings

proven

- Recommended by the Carbon Trust, allows you to cut down on your tenants fuel bills and carbon emissions
- Provided insulation for 9,000 blocks of flats around the country

"The installation process was handled efficiently and the final result is both neat and effective."

Theresa Anderson, Property Manager, South Kensington Estate

why is it worthwhile?

- Improving insulation is simple
- Will allow you to develop, execute and maintain carbon reduction plans
- Maximise the efficiency of your buildings
- Insulating a boiler room, cavity wall and loft can make genuine savings of hundreds if not thousands of pounds per annum
- Cut fuel and energy costs
- Payback period in under 2 years in most applications

sustain

Working across organisations, buildings, products, services and supply chains.

For more information, please contact
Adrian Newton on +44 (0)1934 864 824
Email adrian.newton@sustain.co.uk
www.sustain.co.uk or
http://solutions.sustain.co.uk

This thermal image shows the reduction in heat loss after valve insulation jacket is fitted

Major Works »

The average house price in England and Wales is 219,844, showing only a 0.2% Increase of £483 over January prices.
Source: LSL Property Services

CASE STUDY

MAJOR WORKS RESTORE BLOCK TO ART DECO ELEGANCE

Geoff Armes reports on the refurbishment of Nell Gwyn House

One of the new boilers being delivered ... with inches to spare

NELL GWYNN HOUSE is a classically designed 1930's Art-Deco Style 10-Storey block of 430 apartments located in the heart of Chelsea. Over two summers, a potentially highly disruptive major works project was undertaken. However, the project was completed on schedule, within budget and without causing unnecessary disturbance to the residents of one of London's most prestigious blocks.

Phase one of the works was undertaken during the summer of 2010. This involved the removal of the existing heating boilers. The units, manufactured by Hoval, had been in-situ since the early 1970's and had provided years of trouble free service. However, the guidelines set out by the Chartered Institute of Building Services Engineers' deemed them as being beyond their recommended life. They were operating inefficiently and generating large gas bills at peak times of the year. The replacement boilers, also manufactured by Hoval, have brought about improved energy efficiency, greater reliability and have dramatically reduced energy consumption by approximately 15%. As a new control panel was installed too, the building management have the ability to adjust the output to match the load demanded.

Associated works included the removal of asbestos within the boiler room and on the basement level heating and hot water pipes. An extensive valve replacement scheme was also carried out to improve efficiency for future isolation requirements.

The second phase of work removed one, and refurbished two of the existing cold water storage tanks which had been in place since the block was built in the mid-1930's. The works took place during the summer months of 2011 and included the provision of a new cold water services break tank and booster set. The installation of this additional equipment has ensured a greater reliability of water supply to the apartments and on-site plant. Consequently, the refilling of the tanks is no longer dependent on mains water pressure. This was an important factor when considering the possible future drop in mains bar pressure supplied by Thames Water and the constant demand of water from a largely fully occupied residential block. The volume of stored water on site has reduced, decreasing the possibility of stagnation, and improving hygiene by allowing a higher turnover of supply.

Following a competitive tendering process, the contract was awarded to Bradford Watts by Bill Pryke of Crabtree Property Management, the appointed Maintenance Trustee for the Building. The works were overseen by Bill Nancarrow of DTZ Debenham Tie Leung the appointed Surveyor for the building. He was assisted by the on-site management team of Peter Richards and Geoff Armes.

Geoff Armes AIRPM is the Building Manager at Nell Gwynn House

We have been manufacturing, supplying, fiting and servicing audio and video door entry systems and associated equipment for blocks of flats since 1958; it is what we do.

Visit our web-site at
www.entryphone.co.uk

or call us on
020 8870 8635

Entryphone®
DOOR ENTRY SYSTEMS
23 Granville Road, London SW18 5SD

Selling a £150k property at 10% discount would 'cost' you £15k, if you bought a £300k property, you could save £30k, giving a net benefit of £15k. Source: Designs On Property Ltd

CASE STUDY

WHERE NEXT FOR FROGNAL COURT?

Roger Southam provides his perspective on the important Frognal Court case.

IF THERE WAS EVER A SORRY TALE of how property can go bad when leaseholders and a freeholder fall apart, Frognal Court is it. For 40 years the buildings have gradually drifted into deterioration and no one has benefited.

Chainbow became involved with Frognal Court because of the fissure between the various parties.

The approach to resolving the problems is getting all the parties on the same side of the table and working together. However, after a long period of division this will take time. Chainbow's methodology is to assess at what stage the works have got to; work with Camden Council which issued the enforcement notices and deliver a phased programme of works to get the buildings in a state of good repair. Subsequent to the change of Appointed Manager to Chainbow chairman, Roger Southam, there was a further hearing at the LVT following the Upper Tribunal decision. This resulted in the conundrum as to whether to continue or not with proceedings. Either Bruce Maunder Taylor needs to continue as the Applicant or Mr Southam will need to take over as the Applicant. Mr Southam has no appetite to become the Applicant because it will not be of any use to Frognal Court and is not consistent with how Chainbow will manage the building forward.

Therefore, there is a problem facing all managers if an Upper Tribunal decision states that the LVT should look at the original case and consider affordability as a factor. This clearly leaves an unsatisfactory open-ended position. However, in the instance of Frognal Court, Chainbow does not believe pursing the matter is in the interests of the leaseholders or the freeholder.

Where this leaves property managers and the wider market is that at some point another case will occur which may try to utilise the Upper Tribunal's decision and have affordability reflected in any service charge levels. The practical problems that would arise from this position would be immense. How can property managers carry out financial health checks on all leaseholders? The costs and burden of doing so will be immense and fees would have to rise substantially; which would not be well received in any quarter.

There is little political appetite to regulate property managers and give leaseholders the real safeguard they need, which means the property management industry could end up with a charter whereby the service charge commitment in the lease becomes a matter more akin to mortgage applications, benefit claims or grants.

Will the industry get to a position of means testing leaseholders for service charge demands?

Hopefully not but with an open-ended position anything is possible. At a time of financial uncertainty, every penny gets scrutinised and any tactic to play fast and loose becomes the order of the day. All the while the buildings still need managing and maintaining.

For freeholders and resident management companies the implications are horrendous and highlight the need to ensure that good advice and management is received to protect them from claims flooding in.

Roger Southam is Chairman and CEO of Chainbow

- RMC Directors
- Managing Agents
- Freeholders
- Developers

making property management insurance easier

- bespoke apartment block property insurance solutions
- dedicated secure outsourced online claims handling
- nationwide loss adjusting and rebuild valuations
- directors and officers liability cover
- health & safety guidance

LVT Legal Expenses Policy

Call 0845 3 90 30 30

or email info@blockinsure.com

block insure

Tel: 0845 3 90 30 30
Fax: 0845 3 90 30 31
info@blockinsure.com
www.blockinsure.com
1 Brassey Road, Shrewsbury,
Shropshire, SY3 7FA

FSA

The number of property purchases witnessed in the first six weeks of 2012 is at its highest for five years Source: Zoopla.co.uk

CASE STUDY

THE IMPACT OF AFFORDABILITY ON MAJOR WORKS

Caroline Anstis and David Wadsworth suggest all may not be as it seems

AT FIRST GLANCE, it may seem that Garside (1) Anson (2) v RFYC Limited (1) Maunder Taylor (2) ("the Frognal case") has potential to open the floodgates, enabling tenants to avoid payment of service charges by relying on grounds of affordability.

This could have far reaching consequences. What would the 'affordability criteria' consist of? How would managing agents cope with increased scrutiny of budgets? Would the process of obtaining landlords consent to assign become more rigorous so as to pre-empt affordability arguments?

On closer inspection of the Frognal case, this may not be so.

Section 19 of the Landlord & Tenant Act 1985 (as amended) provides that relevant costs must be reasonably incurred and be reasonable in amount. The Frognal case approved the view that the expression "reasonable" must be given a broad, common sense meaning.

It is important to highlight that, in the Frognal case, it was held that one factor in assessing reasonableness could be the financial impact that major works would have on tenants. It was not the only consideration.

Further, it was made clear that financial inability to pay service charges was not a ground excusing tenants from liability. The obligations under the Lease continue to apply.

The Frognal case might be better viewed as establishing a general principle that, demanding large sums from tenants over a short time period might be unreasonable, and that timescales should be taken into account when deciding reasonableness.

SOME PRACTICAL POINTS TO CONSIDER:

Reserve/sinking funds

Check whether Leases contain provision for a reserve/sinking fund because not all do. If a landlord has built up a pot of money from which the service charges can be taken, then objections from tenants on grounds of financial hardship should not arise. If Leases are silent on this, they may be amended with the agreement of all tenants.

Seek advice

2. Consider obtaining advice from a surveyor as to the urgency of works. Perhaps plan expenditure over a 5-10 year period.

BUILDINGS INSURANCE

The insurance policy may require the building to be kept in good repair and condition, failing which, claims under the policy might fail. Ask a surveyor to advise on repair works, taking into account the policy terms.

EVIDENCE OF HARDSHIP

Landlords/ managing agents might want to consider notifying tenants, particularly when serving Section 20 Notices, that they will be required to produce supporting evidence should they wish to plead poverty. Tenants might be reluctant to disclose their financial status!

ALLEGATIONS OF HARDSHIP

(i) Compare the number of tenants who object to payment as against the total number of tenants in the building.

(ii) Look at the tenants' financial position: a tenant who has no significant income might never be able to pay service charges over any period and an argument based on hardship would be unlikely to succeed.

We await the decision of the LVT with interest but for now, we are satisfied that landlords/ managing agents need not panic!

Caroline Anstis is an Associate Solicitor and David Wadsworth a Senior Associate Solicitor at Piper Smith Watton LLP

Trust Premier
Property Management

Why put your trust in Trust?

- ✔ Industry acknowleged leader in customer service - proud winner of the News on the Block London property management company 2011/12
- ✔ Access instant reports online showing you the status of all your pending maintenance requests through your own dedicated block website
- ✔ Instantly contact all residents via email and text messaging?
- ✔ Access expenditure analysis reports, income reports, budget comparison reports whenever it suits you?
- ✔ A Managing Agent that really look after your money
- ✔ A secure, dedicated website for your property

Winner
London Property Management Company of the Year 2011-12

PROPERTY MANAGEMENT AWARDS 2011-12
www.newsontheblock.com
WINNER

That's why you should put your trust in Trust

Contact Trust

Telephone: 0845 260 1515
Fax: 0845 260 1514
DX: 57150 Edgware
Email: info@trustplc.com
Web: www.trustplc.com

SERVICE CHARGES

SERVICE CHARGE RECOVERY HAS NEVER BEEN SO DEMANDING

Roger Hardwick advises landlords, management companies and managing agents to ensure service charge demands are sent out promptly and accurately reflect the costs to which they relate.

SECTION 20B of the Landlord and Tenant Act 1985 provides that if any costs taken into account in calculating a service charge were incurred more than 18 months before the demand for payment is served; the lessee is not liable to pay those costs.

The correct amount must be stated in the demand. A subsequent corrective demand for an increased amount will be unenforceable if it offends the 18 month rule (Paddington Walk Management v Peabody Trust).

With regard to payments on account, the lessee will not be liable to pay a balancing charge in respect of any costs incurred more than 18 months before the demand. Any amount payable and paid in advance will be unaffected (Holding & Management (Solitaire) v Sherwin).

Section 20B(2) provides some respite: the statutory sanction does not apply if, within 18 months (beginning with the date when the relevant costs in question were incurred), the lessee was notified in writing that those costs had been incurred and he would subsequently be required to contribute by way of a service charge.

The requirements of a section 20B(2) notice were considered in Brent LBC v Shulem B Association. The High Court decided the notice must refer to costs actually incurred. An estimate of future costs will not suffice. Further, the notice must identify and specify a figure for those costs. However, a landlord who knows he has incurred costs, but is unable to state the amount precisely, may specify a figure as a limit on the cost ultimately recoverable. Finally, it is not necessary for the notice to state what proportion of the costs will be passed onto him; nor what the resulting service charge demand will be.

The Upper Tribunal case of OM Property Management Limited v Thomas Burr addressed the question of when costs have been "incurred" for the purpose of establishing when the 18 month time limit starts.

His Honour Judge Mole QC noted that although a contractual liability may be incurred at the point that a service is provided; a liability does not become a "cost" until made concrete. From this, he extrapolated: "'costs' are 'incurred' on the presentation of an invoice or on payment". Whether a particular cost is incurred on the presentation of an invoice or on payment "may depend on the facts of the particular case".

The key issue is therefore when the cost has become "concrete". This may depend on whether there is a genuine dispute over the invoice amount.

In view of the uncertainty; landlords, management companies and managing agents should adhere to the proverb: "the cautious seldom err". When an invoice is presented, it is safer to assume the time limit runs from that date (as opposed to the date of payment). The demands that follow should be sent as soon as reasonably practicable and, if a delay is likely, section 20B(2) notices should be served without hesitation.

Roger Hardwick is Head of Enfranchisement at Brethertons Solicitors.




Residential

Block Managements

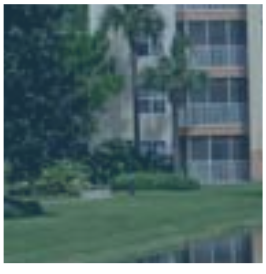
Specialists in residential Block Managements Nationwide
From 2 flats to schemes of 500 plus flats
Collection of Service Charges and Ground Rents
Day to day maintenance co-ordination
24/7 emergency out of hours team

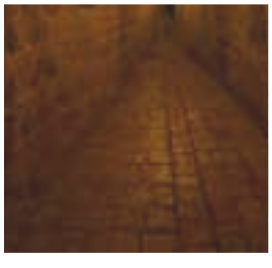
www.morelandestate.co.uk












We ensure landlords/management companies comply with the terms of the lease.
We can arrange insurance for schemes we manage at competitive rates.
Credit schemes available to lessees for payment of service charges.
Clients and lessees can view accounts and pay bills on-line!

T 020 7043 4260 F 020 7043 4261
E mail@morelandestate.co.uk
P Premier House, 112 Station Road, Edgware, Middlesex HA8 7BJ

Moreland Estate Management

NEWS ON THE BLOCK
HELP AND ADVICE FOR FLAT OWNERS

Tel 0845 618 7746
Fax 0845 618 7749
Email enquiries@newsontheblock.com
www.newsontheblock.com

This supplement was first published in issue 59 of News on the Block published in March 2012.