

## **Comptroller and City Solicitor**

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**Our ref** BR1502/001/RH/TB

**Date** 26 November 2013

Dear Sirs

### **The Barbican Estate - Remedial Works to Exterior Concrete**

I thank you for your letter dated 22 November sent late that day by e-mail, the hard copy arriving by post on 25 November.

Firstly, I did not write to you on 5 November?!. Other than a brief e-mail sent on 1 November, I have written to you once, and that was on 10 October.

I am pleased that you have now begun to articulate your arguments. It was my understanding/impression rightly or wrongly, that your clients acknowledge the necessary works to the concrete do not amount to the making good of a structural defect having accepted at a previous meeting(s) expert opinion on that point. If your clients' position has changed, perhaps you will confirm.

If your clients' position has not changed, your arguments appear to be that as the concrete forms part of the structure of the block (and the City's position is presently reserved in that respect for the purposes of this correspondence), then remedial work undertaken to that structure amounts to work being carried out to make good a defect with the structure which the City were aware of, or should have been aware of in 1986, and notification given then.

If that is your clients' position, then it appears to ignore the operation of the Lease which, in my view, envisages two types of repair: (i) repairs carried out in order to keep in repair the structure and exterior and (ii) repairs to make good any "structural defect". If your clients accept that the first type of repair has proved necessary, that is work to repair the structure and exterior, as opposed to the making good of a structural defect, then as a mere running repair, the City's position is that the associated costs are recoverable.

As far as the 1986 position is concerned, I am instructed that a fair conclusion of Ove Arups' findings is as follows:

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Appendices\Appendix F Item 6 CoL letter 261113.doc



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“The condition of the concrete was discovered to be generally good and free from major defects”

“None of these defects are of structural or other particular significance”

Moreover, just because part of a buildings structure or exterior requires repair, does not in my view mean, applying the provisions of the standard form of Lease, the associated costs are irrecoverable.

Referring back to your opening letter of 7 October, you asserted that no notice of the remedial works to remedy defects in the structure of the building was given. That is not right. Your assertion, now that you have begun to articulate your arguments, is obviously aimed at the position in 1986. I am grateful for the explanation.

I obviously appreciate that the Order for Dispensation does not affect liability or preclude your clients’ challenging cost recovery; that much is even made clear in the Order itself if it needed to be made clear. If your clients have issues regarding reasonableness of sums demanded and to be demanded and/or the standard of the works carried out, perhaps they would provide full reasoning and evidence in support.

As a first measure and following receipt of your letter only yesterday, I will take further instructions from my client Director. I anticipate an Instruction to Counsel where after it is entirely possible a meeting to explore matters will be considered appropriate in the not too distant future.

Yours faithfully

**R Howlett**  
**For Comptroller and City Solicitor**