

Mr M Cogher  
Comptroller and City Solicitor  
City of London  
Guildhall  
PO Box 270  
London  
EC2P 3EJ

7 October 2013

Our Ref                    KDG/Barbican/SMD  
Your Ref

Dear Sirs

**The Barbican Estate – Remedial Works to Exterior Concrete**

We are instructed on behalf of the Barbican Association in connection with the investigations which have been carried out and the remedial works which are currently being undertaken to the exterior concrete of the buildings comprising the Estate.

We understand it is the intention of the City to recover the entirety of the cost of these works from the leaseholders under the terms of their leases as part of the service charge. You will be aware that the Association has received an opinion from specialist counsel to the effect that, contrary to the conclusions set out in the report of the Director of Community and Children's Services to the Barbican Residents Consultation Committee and the Barbican Residential Committee dated 16 September 2013, such costs are not recoverable under clause 4(3) of the leases as the works are necessary to remedy defects in the structure of the building of which no notice has been given to the leaseholders, either expressly in their leases, or within 5 years following the grant of those leases. We concur with the advice counsel has given.

There seems to be no, or no significant, dispute regarding the existence of the defects, the probable cause of the defects or the remedial works that are needed (although our client reserves its position as to whether the cost of the works is reasonable and/or whether they have been carried out to a reasonable standard). The principal point of difference between the parties appears to turn on whether the works are necessary to repair a defect in the "structure" of the building. The documents we have seen indicate that the debate thus far has focused on whether or not the effect of the spalling concrete has impacted adversely upon the structural/loadbearing integrity of the buildings. In concluding that the defects are not structural the City appears to have been influenced by the advice of its engineers to the effect the structural/loadbearing integrity of the buildings has not been affected, at least for the time being.

The issue is a legal rather than a technical one; the question of whether any element of a building is part of its "structure" for these purposes is a matter of law and not an issue on which an engineer is qualified to express an opinion.

The cost of the remedial works is substantial. Whether it is recoverable from leaseholders or payable by the City is a matter of great concern to all parties and needs, as we are sure you will agree, to be addressed

sooner rather than later. In this regard our client is willing to attend a further meeting to explore whether this can be resolved without having the matter referred to the First Tier Tribunal for a determination. If, however, such a meeting is to take place we respectfully suggest that it should be attended, not by engineers and construction industry experts, but by you, our Ms Glanville and no more than one or two representatives of the parties. Perhaps you could let us know as soon as possible whether this proposal is of interest to you and, if so, let us have two or three dates when a meeting would be convenient.

Yours faithfully



**Pemberton Greenish LLP**