

Committee(s):	Date(s):
Barbican Residential Committee	17 March 2014
Subject:	Public
Barbican Estate – Concrete Investigation and Repairs	
Report of:	For Decision
Director of Community and Children’s Services	

Summary

On 19 April 2012, the following resolution was made from the Ward of Cripplegate, Within & Without to the Court of Common Council :

“Since the recent testing and remedial works to the concrete in the three Barbican Tower Blocks relate to structural matters, Barbican residents take the view that the costs for these works should be borne by the Landlord i.e. the City of London Corporation and not Long Lessees of the Barbican Estate. Does the Corporation not agree that this is a reasonable and correct assumption of Barbican residents? On what basis does the Corporation arrive at a different conclusion to residents and furthermore, what provision of the lease would justify charging Long Lessees for these works?”

It was resolved by the Court that the resolution be referred to the Barbican Residential Committee for consideration.

This report provides the background to the required works and responds to each of the three questions raised in the Wardmote:

1. Does the Corporation not agree that this is a reasonable and correct assumption of Barbican residents?
2. On what basis does the Corporation arrive at a different conclusion to residents?
3. What provision of the lease would justify charging Long Lessees for these works?

Recommendations

That the Barbican Residential Committee considers the findings of the concrete investigation and agrees the conclusion in response to the resolution that the works are not the rectification of a structural defect, but rather general repairs and maintenance, and that the lease stipulates that such work is recoverable through the service charge.

Main Report**1. Background**

1.1 Your Committee received a report in March 2012 (Appendices A) regarding the results of the concrete investigation and repair works, which had been necessary to be undertaken to the three Barbican Towers. The general conclusion was that the concrete had been assessed to be in “remarkably good condition for its age” and “that repairs were of a cosmetic nature rather than structural”. The detailed report, provided by Bickerdike Allen Partners, is in Appendix B

1.2 Following the April 2012 resolution, Barbican Residential Committee received a request from the Barbican Association (BA) to defer the final report to enable further consideration to be given by the BA. The Barbican Estate Office received a request for additional information from the Barbican Association in January 2013. The Questions and Officer’s responses are provided in Appendix C.

1.3 Further to these responses a follow up meeting took place on 30th April 2013, chaired by the then BRC Deputy Chair – Mr Gareth Moore with representatives from the BA and RCC, also present were City of London Officers, Bickerdike Allen Partners and Dr J Broomfield. The minutes of this meeting are provided in Appendix D.

1.4 A report scheduled for Barbican Residential Committee in September 2013 was further deferred, at the request of the Barbican Association (BA), until December 2013. During the intervening period, additional information was requested by the BA, which was subsequently provided by Officers on 27th September 2013. An exchange of correspondence had been entered into between the BA’s solicitors and the City of London Solicitor’s, however, as at December 2013 no additional information had been forthcoming to articulate the BA’s argument in support of their request that the City of London should not charge the cost of the work to the long lessees of the Tower blocks. A report was submitted to BRC in December 2013 and further deferred at the request of the BA.

1.5 On 18th December 2013 additional information regarding the specification of initial repairs was requested by the BA. As at 12th February 2014 all information requested from the BA has been provided and a detailed timeline of such requests and officer responses is provided in Appendix F.

1.6 A further exchange of correspondence has been entered into between the BA’s solicitors and the City of London Solicitor’s, however, as at 12th February 2014 and despite reminders to same, no additional information has been forthcoming to articulate the BA’s argument in support of their request that the City of London should not charge the cost of the work to the Tower

block long lessees. Copies of the exchanges of correspondence are provided in Appendix G.

2. Summary of the work carried out

2.1 Following the safe removal of a loose section of concrete to Shakespeare Tower in June 2011, consultants Bickerdike Allen Partners were called in to provide specialist advice. Following receipt of their recommendations, arrangements were put in place to inspect all three Towers for loose concrete fragments due to the potential health and safety risk, and tests carried out to determine the condition of the concrete generally.

2.2 As the estimated cost of the work exceeded the statutory limit for leaseholders' contributions, a statutory consultation notice was issued to leaseholders concerning the investigative works. A further notice was despatched, when the extent and cost of the repairs became known, following the examination and report by the Engineers. In July 2013 the City of London sought and obtained dispensation from further consultation from the Leasehold Valuation Tribunal (now First Tier Tribunal – Property Chamber), under section 20ZA of the Landlord and Tenant Act 1985, in relation to the works undertaken thus far and the retention of Structural Renovations Ltd for the forthcoming finishing works.

3. The issue of a “structural defect” in relation to the concrete repairs

3.1 The term “structural defect” in this context relates to the original Housing Right to Buy legislation, which stipulated that a local authority landlord could not recover the cost of correcting such defects from leaseholders. However, these costs could be recovered if the purchaser of the flat had been informed of the defect before the purchase or, if the defect did not become apparent to the landlord until at least 10 years after the sale.

3.2 For comparison purposes, in the case of the renewal of the Barbican roofs, carried out in the 1990's, the City Corporation agreed that it would pay for the cost of correcting structural defects as it was clear that a number of problems were caused by inadequate design or workmanship and these had been evident from the building's original completion. The cost of renewing building components associated with the defects that had failed through normal wear and tear were however recovered through the service charge provisions contained in the lease.

4. Concrete Inspections and Nature of Repairs.

4.1 The results of the recent technical investigation carried out by the engineers have been analysed by consultants Bickerdike Allen Partners and their March 2012 report is attached as Appendix B. In general terms, the repairs were entirely expected and usual for buildings of this age and, following laboratory analysis, the concrete was found to be of very high

APPENDIX 3

quality. The isolated problems discovered were typical of a building which is over 40 years old and were very minor in relation to the overall amount of exposed concrete. In contrast, an example of a problem discovered with older concrete buildings was the use of high alumina cement during construction, which eventually results in a weakening of the concrete; fortunately, this material was not used in Barbican concrete.

4.2 The repairs required were of a cosmetic nature rather than structural – i.e. they did not adversely affect the load bearing capacity nor were they to correct an inherent or design defect – although they had to be classified as essential due to the health and safety risk. It is accepted that all elements of a building will deteriorate over time, and it is reasonable to expect that periodic inspection and maintenance work of this nature will be required to keep the property in good condition for the future.

4.3 The works to the concrete do not amount to works to make good a structural defect but are works necessary to effect repairs and maintenance, unlike for comparison the replacement of the Barbican roofs, which were, in part, known not to be fit for purpose, as they were leaking from the outset due to incorrect design.

4.4 This statement is further supported by earlier inspections of the Towers carried out by Ove Arup in 1986 at which time they concluded that:

“The concrete of all three Tower Blocks has, as reported to you, recently been inspected. The condition of the concrete was discovered to be generally good, and free of major defects.

None of these defects are of structural or other particular significance. No such defect has constituted a potential safety hazard, for example, arising from the detachment of concrete from the building surface.

No evidence of defects due to alkali silica reaction, or chloride attack, were evident on inspection, or were expected.”

5. Corporate & Strategic Implications

5.1 The works contribute to the following aims of the City Together strategy: “supports our communities” and “protects, promotes and enhances our environment”.

6. Legal Implications

6.1 The Comptroller and City Solicitor have been consulted in the preparation of this report and his comments are incorporated in the report.

7. Conclusion

7.1 In response to the question *“Does the Corporation not agree that this is a reasonable and correct assumption of Barbican residents?”* our response is as follows:

Following the concrete investigations, the expert opinions of Dr R Casson (Bickerdike Allen Partners) and Dr J Broomfield are that the repairs required were of a cosmetic nature rather than to make good a structural defect (see paragraph 4.2) and we therefore do not agree with the Barbican Association’s view that the costs for these works should be borne by the Landlord.

7.2 In response to the question *“On what basis does the Corporation arrive at a different conclusion to residents?”* our response is as follows:

The expert opinions of Dr R Casson (Bickerdike Allen Partners) and Dr J Broomfield are that the repairs required were of a cosmetic nature rather than to make good a structural defect (see paragraph 4.2). As such the repairs should be regarded as periodic repair and maintenance of a building over the course of its life rather than making good a structural defect.

7.3 In response to the question: *What provision of the lease would justify charging Long Lessees for these works?* our response is as follows:

In relation to the clause in the lease requiring the City to recharge for the cost, Clause 4 (3) of the standard lease provides that the tenant covenants to:-

“Pay to the City in the manner and at the times hereinafter described a reasonable part of the costs of carrying out specified repairs and of insuring against risks involving specified repairs”.

"the costs" means the costs of carrying out specified repairs and of insuring against risks involving specified repairs and "specified repairs" means repairs carried out in order:

to keep in repair the structure and exterior of the premises and of the Building in which they are situated (including drains gutters and external pipes) not amounting to the making good of structural defects;

to make good any structural defect of whose existence the City has notified the tenant before the date hereof (such defects being listed in the Fourth Schedule hereto) or of which the City does not become aware earlier than five years after the grant hereof; and

to keep in repair any other property over or in respect of which the tenant has any deemed rights”

APPENDIX 3

Therefore, even if the repairs amount to the making good of a structural defect, which they do not, long leaseholders still have a contractual obligation to contribute towards the costs incurred as a result of the operation of the second part of sub-clause referred to above.

Background Papers:

Report to the Residents' Consultative and Barbican Residential Committees: 12 March and 26 March 2012 (Appendix A)

Appendices

Appendix A – Report to BRC 26 March 2012

Appendix B – Bickerdike Allen report dated 16 March 2012

Appendix C – Response to BA questions Jan 2013

Appendix D – Minutes of meeting 30th April 2013

Appendix E – BRC Minutes Mar 2012 – Dec 2013

Appendix F – Timeline of exchange of information between the BA and BEO

Appendix G – Exchange of correspondence between the BA's solicitor, Pemberton Greenish and CoL Comptrollers.

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