

Committee(s):	Date(s):
Barbican Residents' Consultation Committee Barbican Residential Committee	2 September 2013 16 September 2013
Subject: Barbican Estate – Concrete Investigation and Repairs	Public
Report of: Director of Community and Children's Services	For Decision
<u>Summary</u>	
<p>1. This report follows the resolution of the Court of Common Council on 19 April 2012 requesting your Committee to consider the question raised by the Ward of Cripplegate, Within and Without that the City, as landlord, should not charge the cost of the work to the three Barbican towers to long leaseholders. This report provides a background as to why the work was necessary and evaluates whether the work can be considered to be the making good of a structural defect in the original construction.</p> <p>Recommendations</p> <p>2. That the Barbican Residential Committee is asked to consider this report and agree the conclusion 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.</p>	

Main Report

Background

3. Your Committee received a report in March 2012 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 further works of this nature should not be necessary for 20 to 30 years.
4. On 19 April 2012, the following resolution was made from the Ward of Cripplegate, Within & Without to the Court of Common Council :
 - i. "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.

Following this resolution and a request by the BA to defer the final report, to enable further consideration to be given by the BA, a request for additional information was received from the Barbican Association in January 2013. The Questions and Officer's responses are provided in appendix B.

A follow up meeting took place on 30th April 2013, chaired by the BRC Deputy Chair – Mr Gareth Moore with representatives from the BA, RCC and City of London Officers, Bickerdike Allen Partners and Dr J Broomfield. Please see Appendix C – minutes of meeting 30th April 2013.

Summary of the work carried out

5. 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.
6. 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 (LVT), under section 20ZA of the Landlord and Tenant Act 1985, in relation to the works undertaken thus far and the retention of Structural Renovations for the forthcoming finishing works

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

7. 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.
8. 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.

The nature of the concrete repairs identified

9. The results of the technical investigation carried out by the engineers have been analysed by consultants Bickerdike Allen Partners and their report is attached as Appendix A. 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 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.
10. The repairs required were of a cosmetic nature rather than structural – i.e. they did not adversely affect the load bearing capacity – 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.
11. Replacement of the Barbican roofs, which were known not to be fit for purpose, as they were leaking from the outset due to incorrect design, can be distinguished from the works to the concrete, which do not amount to works to make good a structural defect, but are works necessary to effect repairs and maintenance.

Corporate & Strategic Implications

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

Legal Implications

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

Conclusion

14. Taking into consideration the nature of the repairs required, officers are of the view that the concrete investigation and resultant 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. 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:-

- i. “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”.
- ii. "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:
 - (i) 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;
 - (ii) 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
 - (iii) to keep in repair any other property over or in respect of which the tenant has any deemed rights”

15. 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 ii(ii) above and as referred to in paragraph seven above.

Background Papers:

Report to the Residents' Consultative and Barbican Residential Committees: 12 March and 26 March 2012

Appendices

Appendix A – Bickerdike Allen report dated 16 March 2012

Appendix B – Response to BA questions Jan 2013

Appendix C – Minutes of meeting 30th April 2013

Contact:

Karen Tarbox k.tarbox@cityoflondon.gov.uk or 0207 332 1325