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Residential Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 20C AND 27A OF THE LANDLORD AND TENANT ACT 1985

Reference number:	LON/00AJ/LSC/2005/0321
Property:	Southall Court, Lady Margaret Road, Southall, Middlesex, UB1 2RG
Applicant:	Southall Court (Residents) Limited
First Respondent:	Mr K S Raino (lessee of flat 25)
Second Respondents:	The Lessees of all 48 Flats in the Property
Appearances:	For the Applicant: Mr P Ward LLb, a Barrister and Director of the Applicant Company Mr A De La Haye, Chairman and Secretary of the Applicant Company Mr A Lawrence BSc (Hons), MRICS Mr R Guraya (Lessee of Flat 4) appeared on behalf of the First Respondent and those Second Respondents who are members of Southall Court Leaseholders' Forum
Tribunal Members:	Mr A Andrew LLb Mr C Kane FRICS Mr T Sennett MA, FCIEH
Applications:	15 November 2005
Directions:	16 January 2006
Hearing:	18, 19 and 20 April 2006
Decision:	8 May 2006

DECISIONS

1. The Applicant having abandoned its outstanding claim against the First Respondent we made no determination on those matters referred to us by the Willsden County Court.

2. We determined that if reasonable costs were incurred in respect of the following work a service charge equivalent to one forty-eighth of those costs would be payable by each of the Second Respondents to the Applicant: -

   (a) The replacement of the front garden wall but not the installation of art deco railings;

   (b) The repair of the cracking to all relevant elevations including the insertion of expansion joints to prevent recurrence;

   (c) The installation and/or replacement of air bricks;

   (d) The re-pointing of the external brick balconies;

   (e) The installation of roof lights to the bin store;

   (f) The capping of the existing chimneys and re-rendering and repair of the stacks;

   (g) The replacement of the eaves and rainwater goods;

   (h) The repair of the external rendering to the top floor;

   (i) The repair of the stairwells, stairs and floor screeds to the common parts;

   (j) In respect of the Second Respondents holding B and C Leases (see below) the levelling of the communal stairwells and laying of cushioned vinyl;

   (k) The removal of pigeons, nests and droppings from the lofts;

   (l) The redecoration of the external elevations, communal stairwells, external iron pipework and lamp posts;

   (m) Site clearance and making good on completion of the works and the provision of scaffolding and/or a cherry-picker to complete the proposed works;

   (n) Supervision of the works by the Lawrence-Vacher Partnership in accordance with their scale of fees set out in a letter to the Applicant dated 30 September 2005.

3. We determined that no service charge would be payable by the Second Respondents in respect of the cost of the following works proposed by the Applicant: -

(a) The replacement of the existing roof;

(b) The carpeting of the communal stairs;

4. The works referred to in paragraph 2 above should be re-specified and re-tendered and the statutory consultation process repeated.

5. We ordered that the Applicant should not be entitled to recover its costs incurred in the proceedings relating to the first application (see below) from the First Respondent, through the service charge.

6. We made no order either on the Applicant's application for reimbursement of fees paid to the tribunal or on the Second Respondents' application under Section 20C of the Landlord and Tenant Act 1985 ("the Act").

APPLICATIONS

7. The Applicant issued proceedings against a number of lessees (including the First Respondent) in the Uxbridge County Court for recovery of unpaid service charges. The First Respondent lives within the jurisdiction of the Willsden County Court and accordingly the claim against him was transferred to that Court. On 15 November 2005 District Judge Dabezies transferred the issues of reasonableness, relating to the service charge years 2001/02, 2002/03, 2003/04, to the Leasehold Valuation Tribunal ("the first application").

8. On 15 November 2005 the Applicant applied, under Subsection 27A(3) of the Act, for a determination that if proposed costs were incurred in a major works project a service charge would be payable by each of the Second Respondents ("the second application").

9. At the pre-trial review on 11 January 2006 the two applications were consolidated although in respect of the first application Mr Raino remained the sole respondent.

10. Mr Guraya applied on behalf of all the Respondents, under Section 20C of the Act, for an order limiting the recovery, through the service charge, of the Applicant's costs incurred in these proceedings. Mr Ward requested us to order the Respondents to refund the application and hearing fees paid by the Applicant.

FACTS

11. We heard oral evidence from Mr A Laurenz (flat 41), Mr P Ward (flat 3) and Mr De La Haye (flat 37), on behalf of the Applicant and from Mr R Guraya (flat 4) on behalf of the First Respondent and the Second Respondents who are members of the Southall Court Leaseholders Forum. We inspected the Property on the morning of the 18 April 2006 in the presence of Messrs Ward and De La Haye for the Applicants and Mr Guyana and Mr Dhillon for the

Respondents. On the basis of the oral evidence, our inspection, the documents in the hearing bundle to which our attention was specifically drawn and the submissions made by Mr Ward and Mr Guraya, we found the following relevant facts: -

(a) The Property is a three-storey block of 48 flats built in the late 1930's. It consists of three wings (north, west and south) arranged round three sides of a courtyard. The shorter west wing faces Lady Margaret Road and is bisected by an arched drive that provides vehicular access to the car parking spaces in the courtyard and to a block of housing association flats to the rear of the Property. To the front of the west wing grassed areas, on both sides of the drive, are enclosed by a low retaining wall referred to in more detail below. A number of communal halls and stairwells provide access to the individual flats.

(b) The flats were originally let on short tenancies but from about 1955 they were sold on the basis of long residential leases. It would seem that the Property fell into a long period of decline and was neglected by successive freeholders. A residents' association was formed in 1988. Ten years later, in 1998, the then members of the residents' association formed Southall Court (Residents) Limited and through that company purchased the freehold interest in the Property in an arm's length commercial transaction. Upon completion of that purchase, the old residents' association was disbanded.

(c) It was apparent that only a minority of the lessees participated in the purchase of the freehold interest. The company was purchased "off the shelf" and although it has a share capital of 48 £1 shares, we accepted Mr Ward's evidence that there are no provisions in the Articles and Memorandum of Association of the company which either limit membership to current lessees or provide for the transfer of a lessee's holding on completion of a flat sale. Equally such provisions are not included in any of the leases of the individual flats.

(d) The current directors of the property are Mr Ward, Mr De La Haye and Mr Lyon. Between them they hold 18 shares in the company. There are 17 other members at the company who each hold one share. Thus the directors have de facto control of the company. Of the 20 members, three no longer own a flat in the property, including Mr Lyon. Thus it will be seen that only a minority of the lessees (17 out of 48) are members of the company.

(e) There is a deep-seated animosity between the directors of the company and a substantial number (but by no means all) of the lessees. It is apparent that the cause of that animosity is two-fold: a number of non-participating lessees consider that they have been wrongly excluded from membership of the company whilst others resent the directors controlling interest in the company.

(f) That animosity has regrettably resulted in two previous applications to this tribunal and a substantial number of county court claims for unpaid service charges.

(g) More recently an informal residents' association has been formed under the name of Southall Court Leaseholders Forum. The Forum claims 35 members although this was disputed by Mr Ward. The Chairman of the Association is a Mr A S Dhillon of flat 13. At the hearing the Association and its members were represented by Mr R Guraya of flat 4 who, perhaps ironically, is one of the members of the company.

(h) Following the purchase of the freehold interest, the directors of the company decided to embark upon an ambitious programme of work intended not simply to reverse the long period of neglect but to restore the property to what Mr Ward considered to be *"its former glory"*. The consequent increase in service charges has only served to fuel the animosity referred to above. The position has no doubt been exacerbated by the inability of some of the lessees to meet those service charges. We were told by Mr Ward that the flats sell for approximately £155,000. It is thus not unreasonable to suppose that they will be purchased by those of modest means, many of whom will be unable to fund a significant and sustained increase in the service charge.

(i) On two previous occasions, in October 2000 and June 2002, a differently constituted tribunal heard applications under subsections 19(2a) and (2b) of the Act relating to the reasonableness of costs incurred and to be incurred. At that time the tribunal had no jurisdiction to determine the payability of service charges under what is now Section 27A of the Act.

(j) It is only necessary to record that following the second hearing, the tribunal in a decision issued in August 2002, concluded that, at that time, it would not be reasonable to replace the roof of the Property. However, in reaching that conclusion the tribunal recognised that the roof was *"approaching the end of its useful life and will need replacing before major failure occurs"*. The Tribunal considered that it would be reasonable to consider the replacement of the roof within a time scale of 5-10 years. It recommended the creation of a reserve fund to spread the burden of the cost and noted, in its earlier decision *"that a systematic planned maintenance programme was lacking"*.

(k) In 2004, following a statutory consultation Southall Court (Management) Limited was appointed as managing agent. There are four members of that company, at least two of whom (Mr Ward and Mr De La Haye) also hold shares in the Applicant company.

(l) The Applicant has already completed one tranche of works including the installation of entryphone systems, the renewal of the rainwater goods and the installation of new entrance doors to the communal

stairwells. It now proposes to embark on a second tranche of works and to that end Southall Court (Management) Limited instructed Mr A Lawrence, a chartered surveyor with the Lawrence-Vacher Partnership, to prepare a condition report. That report was prepared on the basis of inspections carried out by Mr Lawrence between October and December 2004. On the basis of that report and on receipt of instructions from his client, Mr Lawrence then prepared a comprehensive specification of works. The specification was put out to tender but only two estimates were received: one from D R Limerick Construction Limited in the sum of £269,680.12 and the other from H Carolan Construction in the sum of £264,706.35. These sums were stated to be inclusive of VAT but not contract administration or health and safety supervision fees estimated at £17,500 and £2,000 respectively. Statutory consultation notices were issued under Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003. These were not put in issue by Mr Guraya during the hearing, although for reasons that will become apparent Mr Ward conceded that fresh consultation notices would have to be issued in due course.

(m) Following the issue of these consultation notices, a third estimate was received from Underpin & Makegood Limited at an apparently much reduced price. In a very brief email dated 26 October 2005, Mr Lawrence wrote to Mr Ward advising that the estimate from Underpin & Makegood Limited should be accepted. It is their priced specification that in essence forms the basis of the second application.

(n) Mr Lawrence had helpfully reduced the priced specification to a Scott Schedule, which listed the various items, together with their estimated costs and included both the contract administration and planning supervision fees. In total the cost, inclusive of VAT was estimated at £266,546.47. The contractor's original estimate had been subject to an inflationary uplift that had been calculated by Mr Lawrence and incorporated in the Scott Schedule.

THE LEASES

12. There are three types of leases in circulation. The original leases granted between 1955 and about 1988 when the original residents' association was formed ("A" leases); leases granted between about 1988 and 1998 when the Applicant purchased the freehold interest ("B" leases); leases granted since 1998 ("C" leases).

13. The A leases are rudimentary. The lessee's obligation to pay the service charge is to be found at subclause 3(5) and reads as follows:

> *"At all times during the said term to pay and contribute a rateable or due proportion of the costs and expense of lighting the staircase and passageways and entrances and of making repairing maintaining painting supporting rebuilding and cleansing all ways staircases passageways pathways sewers drain pipes watercourses water pipes*

cisterns tanks and gutters which are common to the premises or any part thereof and any adjourning flat party walls party structures (roofs) and gates fences hedges (if any) easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or the Tenants or occupiers of adjoining flats ..."

14. There are no provisions relating to the calculation or recovery of the service charge and the lessor does not appear to be obligated, save by implication, to undertake the works and provide the services, to which the lessee is required to contribute.

15. In the B leases, the lessee's obligation to pay the service charge is found in Clause 3. The detail is not material to this decision and in essence the lessee is required to pay one forty-eighth part of the costs incurred by the lessor in carrying out its obligations under Clause 4 of the lease. Appropriate provision is made for the calculation and recovery of the service charge.

16. Turning to Clause 4, the lessor's primary obligation is to be found in subclause 4.1, the relevant provisions of which read as follows: -

> *"To maintain and keep in good order repair condition and where necessary painted the external wall surfaces load bearing walls foundations and roof including the gutters and rainwater pipes of the Building ... and the common entrance halls landings and staircases in or leading to the Building and the pathways common lawns gardens and the boundary walls and fences ..."*

17. At subclauses 4.3, 4.4 and 4.7 are three further covenants which were material to the issues in dispute and read as follows:

> *"4.3 At all times to keep the parts of the Estate and Building used or intended to be used in common clean tidy and properly lighted and where applicable carpeted.*
>
> *4.4 To defray such other costs as may be necessary to maintain the Estate as a good class residential Estate and without prejudice to the generality of the foregoing any communal television aerial and Answerphone.*
>
> *4.7. Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the Landlord's absolute discretion may be necessary or advisable for the proper maintenance safety and administration of the Estate and the Building."*

18. Although the C leases were again in a substantially different form, we agreed with Mr Ward's assessment that there were no material differences in the provisions that were relevant to the issues in dispute and it is therefore unnecessary to consider that form of lease further.

PRELIMINARY ISSUE

19. Mr Guraya requested us to dismiss the applications on the basis that they had been made without authority. Mr Guraya considered that the applications could only be authorised by a resolution of the members of the company at a general meeting. There had been no such resolution. He also suggested that both Mr Ward and Mr De La Haye were not properly appointed officers of the company and he drew our attention to a number of alleged abuses by the directors of the company which he said were the subject of proceedings before the Wandsworth County Court; his primary complaint was that the company had been *"hijacked"* by Mr Ward and that shares in the company had not been issued to all 48 lessees.

20. There was no evidence before us to suggest that the directors had not been properly appointed. They had ostensible authority to take and defend proceedings on behalf of the company including proceedings before the tribunal. We were unaware of any general requirement that proceedings can only be taken by a majority vote at a general meeting of a company. In any event it was evident that the directors held a majority of the shares in the company and would have cast their vote in favour of such proceedings. Furthermore, in the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003, an *"applicant"* is defined as *"the person making an application to a tribunal"*. Thus an application could be made by any person who had an interest in the issues in dispute and that certainly included both the Applicant and its directors. For each and all of these reasons, we considered that it was unnecessary for us to conduct an enquiry into the status of the company and its directors and we considered that we had jurisdiction to deal with the applications. We therefore rejected Mr Guraya's request.

OUR GENERAL APPROACH

21. To avoid repetition in the reasons that follow, we set out below our general approach to three recurring themes in this dispute.

Implied Terms

22. It was apparent that the animosity referred to above resulted from a failure on the part of many of the lessees to appreciate that the Applicant had acquired the freehold interest as a commercial venture and that, on the basis of Mr Ward's evidence, it was under no obligation to issue shares to those lessees who had not originally participated in the venture. Having reviewed the hearing bundle, we had no doubt that this misunderstanding, at least in part, resulted from an impression, fostered by the Applicant, that it was in some way representative of all the lessees: an impression that was implicit in its title. That was not the case. Consequently we considered that the Respondents were entitled to the full protection of the terms of their respective leases. This was not a case where it might be appropriate to imply terms into the leases for the purpose of giving them business efficacy in circumstances where the lessor is a lessee-owned company that cannot discharge its obligations unless it obtains a full recovery of its expenditure, through the

service charge. It was a proposition that we put to Mr Ward and with which he agreed.

Price Competitive Tendering

23. During the hearing Mr Guraya repeatedly challenged various heads of expenditure on the grounds that the particular items of work could have been undertaken at lower cost although his submissions were not supported by any evidence. We did not criticise him for that. Nevertheless, where a complex specification of works has been put out to tender and the total price verified by the market we did not consider it appropriate to question the reasonableness of the cost of individual components of the work. To adopt such an approach would put lessors in a wholly impossible situation. The total cost having been tested in the market it must be considered in the round when assessing its reasonableness.

Improvements/Repairs

24. The effect of the additional clauses in the B and C Leases is considered in more detail in the reasons set out below. However, in general terms Mr Guraya took the point, on a number of occasions, that the proposed works amounted to improvements. In general terms we considered that where repairs are necessary, it is reasonable to complete those repairs in accordance with current building practice and the cost will be recoverable even if that results in an element of "betterment". However, unless there is an express provision in the Leases permitting recovery, that would not extend to the provision of installations that were previously wholly absent and could only be regarded as improvements.

REASONS FOR OUR DECISIONS

First Application

25. In issue were the three service charge years 2001/04 that had been referred to us by the Willesden County Court. We heard evidence from both Mr Ward and Mr Guraya in respect of the disputed costs. On the basis of that evidence, we had considerable concerns as to both the reasonableness and the payability of a number of the disputed costs. However, towards the end of the process, Mr Ward informed us that the Applicant wished to abandon its outstanding claim against the First Respondent on the grounds that the time and cost of proceeding was disproportionate to the sum in dispute. It was a surprising decision given that the hearing would have been completed within the allotted three days. Having consulted the First Respondent, Mr Guraya accepted the abandonment subject to a binding undertaking from the Applicant not to proceed against the First Respondent for any of the service charges relating to the years 2001/04 other than those for which judgement was given by District Judge Dabezies on 15 November 2005, in the Willesden County Court. Mr Ward gave such an undertaking on behalf of the Applicant. In such circumstances no issues remained in dispute, in respect of the past service charge years, and there was nothing for us to decide.

26. In abandoning the remainder of its claim against the First Respondent, the Applicant made no concessions. Mr Ward specifically confirmed the Applicant's intention to proceed against the other lessees, for unpaid service charges, in the Uxbridge County Court, where he considered the judiciary to be more *"robust"*. Mr Ward informed us that the Uxbridge County Court had declined to refer the service charge issues to the tribunal and said that it was dealing with the claims as a simple debt collecting exercise. We hoped that the defendant lessees, before that Court, would not be prejudiced by a lack of relevant expertise and inadequate representation. At the request of Mr Ward we confirmed that we would arrange for a copy of this Decision to be sent to District Judge Dabezies.

Front Wall (£22,122.20 plus VAT)

27. The original low front wall, separating the property from Lady Margaret Road, had been rebuilt in about 1990. The work had however been completed to a poor standard and the wall had been erected on the old foundations, with inadequate footings. One section of the wall had collapsed and another section was clearly unstable. The Applicant proposed to demolish the whole of the wall and replace it with a substantially larger structure mounted with railings that had been specially designed in an art deco style. The cost of the railings, including painting, was estimated at £6,625: a sum that Mr Ward considered to be comparatively negligible. Mr Guraya objected to the proposal on the grounds that the railings amounted to an improvement, the cost of which could not be recovered under the terms of the leases considered above.

28. Mr Ward confirmed that the original development of Southall Court did not include railings to the frontage. We agreed that the proposed railings amounted to an improvement, unwanted by the leaseholders' forum. The proposal was well summarised by Mr Lawrence in his report when he wrote that it *"is basically a cosmetic improvement"*. We did not consider that the cost could be recovered under the provisions of the A Leases. Indeed Mr Ward conceded that a term would have to be implied in those leases to permit recovery of the cost and for the reasons set out but we did not consider it appropriate to imply such a term.

29. As far as the B and C Leases were concerned, we did not consider, as suggested by Mr Ward, that the cost could be recovered pursuant to the lessor's obligations, recited above, *"To maintain the Estate as a good class residential Estate"* and *"to do ... all such works ... as ... may be necessary or advisable for the ... safety ... of the Estate"*.

30. The proposed structure was not *"necessary"* to maintain the Property as a good class residential Estate. Equally his argument that the structure was essential for the *"safety"* of the Estate appeared to be undermined by his admission that the driveway would have to be left un-gated to provide unrestricted vehicular access to the Housing Association flats to the rear.

31. We accepted however that the entirety of the wall would have to be rebuilt with proper footings and the trees and privet hedges removed. The work would have to be re-specified and re-tendered on that basis.

Repair Cracking to External Elevations (£16,198.92 plus VAT)

32. On our inspection we noted extensive cracking in the external walls. This had been monitored for a period of six months and we accepted Mr Lawrence's evidence that there was no continuing movement. We agreed with his conclusion that the cracking was caused not by settlement but by thermal movement in the long walls. When built, it would not have been usual practice to include expansion joints. There was no merit in Mr Guraya's suggestion that the walls should be monitored for a further three or four years; it was simply postponing the inevitable. We had no hesitation in accepting Mr Ward's evidence that the cracking had caused cautious surveyors to advise prospective flat purchasers to withdraw. The work was necessary and the installation of the expansion joints was a reasonable measure, in accordance with current building practice, to avoid a recurrence of the problem.

Air Bricks (£3,084.60 plus VAT)

33. It was proposed to relocate low-level airbricks away from waste gullies to prevent flooding of the sub-floor void and the rotting of floor timbers. In addition it was proposed to insert two airbricks into each of the communal staircases to increase ventilation.

34. Mr Guraya did not object to this work, which was clearly necessary and fell within the Applicant's obligations to maintain and repair the Property. He pointed out that the stairways had originally been ventilated by openable windows now replaced by the Applicant with unventilated glass block screens.

Re-point Brick Balconies (£3,084.60 plus VAT)

35. Again the work was not challenged by Mr Guraya and, on the basis of our inspection, it was clearly necessary.

Install Roof Lights to Binstore Roofs (£795 plus VAT)

36. Having inspected the binstore, we disagreed with Mr Guraya's assessment that the work was unnecessary. During the daytime there was no source of light in the binstore, which resulted in lessees leaving refuse in the entrance thus causing a health hazard. In the long run, it would be a more cost effective solution than providing a 24-hour source of light in the binstore. The proposed work was part and parcel of the general maintenance and repair of the Property and the cost was recoverable under the Leases.

Capping the Chimneys and Rendering and Re-pointing the Chimney Stacks (£3,180 plus VAT)

37. On the basis of our inspection the work was clearly necessary and again it was not disputed by Mr Guraya.

Replacement of the Eaves Timbers and Rainwater Goods (£24,333 plus VAT)

38. The gutters and downpipes had been replaced approximately five years ago at a cost in excess of £6,000. It was apparent from the oral evidence given by Mr De La Haye and Mr Laurenz that following this work rainwater had ceased leaking to their flats. The problem had however returned and it is considered in more detail below. It was apparent both from the evidence given at the hearing and from our inspection that the gutters are not correctly aligned with the edge of the roof probably because they have not been adequately secured to any fascia boards. Consequently, during wet weather, rainwater falls behind the gutters and cascades down part of the external walls. Furthermore, we doubted that the size of the gutters and downpipes would be sufficient to displace the volume of water from the roof that would be created during heavy rain.

39. It was apparent that the work had not been carried out to a reasonable standard. In answer to our questions, Mr Ward indicated that he had attempted to recall the contractors but it seemed that they were no longer in business. The inadequate standard of the work previously carried out clearly called into question both the reasonableness of the costs and the ability of Mr Ward and his fellow directors, to effectively manage such work. However, the past service charges were no longer in issue and these were not matters for our consideration.

40. Clearly the rainwater goods would have to be replaced and the work carried out to a substantially higher standard than before. Equally we had no hesitation in concluding that the eaves to all elevations should be replaced with UPVC fascias and soffits, as proposed. The work was required both to properly align the gutters and to prevent pigeons from getting into the lofts.

41. We considered that the proposed work was essential and would address many of the problems that had been incorrectly associated with the roof coverings.

Repairs to External Rendering at Second Floor Level (£1,643 plus VAT)

42. On the basis of Mr Lawrence's evidence and our inspection, it was apparent that ongoing maintenance to the external rendering was required and we did not accept Mr Guraya's suggestion that redecoration would be sufficient to deal with the problems. The repairs were necessary.

Repairs to the Stairwells, Stairs and Floor Screeds (£948.70 plus VAT)

43. On the basis of our inspection, ongoing repairs were necessary to these areas and again this was not disputed by Mr Guraya.

Carpeting of Communal Stairwells (£6,273.08 plus VAT)

44. It was proposed to level the communal stairwells before applying carpet tiles. The communal stairwells were extremely sparse and reflected the condition of the Property when built. It seemed to us that Mr Ward had considerably

exaggerated what he considered to be the *"former glory"* of the Property. The stairwell floors had never been carpeted and were never intended to be carpeted. The proposed upgrading of the communal stairwells was an improvement and the cost could not be recovered under the A Leases.

45. As observed the B and C Leases clearly envisage carpeting *"where applicable"*. Although an improvement, we considered that the cost could be recovered under that provision. However, the foot traffic over the stairwells was such that carpet tiles would eventually become a hazard. Cushioned vinyl, as suggested by Mr Guraya, would be a more appropriate option for the level areas of hallways and landings and the cost would be of a similar order.

Removal of Pigeons, Nests and Droppings from the Roof Space (£4,000 plus VAT)

46. This work had been undertaken five years ago but the problem persisted almost certainly because the eaves had not, at that time, been replaced as now proposed. Nevertheless there was clearly a health and safety issue and the infestation of pigeons had to be dealt with. Mr Guraya's assertion that the work was unnecessary was not credible.

Redecoration of the Exterior and Common Parts (£30,457.54 plus VAT)

47. Mr Guraya's only objection was to the proposed cost and this is dealt with in the previous section of this Decision. The work was clearly long overdue and the cost clearly recoverable under the service charge provisions of all three Leases.

Preliminaries (£12,561 plus VAT) and Fees (£15,334.72 plus VAT)

48. Clearly the reasonable cost of providing any necessary scaffolding and/or a cherry picker and the removal of all materials on completion was an essential element of the work and the cost would be recoverable through the service charge. Equally the reasonable professional fees of the contract administrator and planning supervisor would be recoverable and we had no difficulty with the scale proposed by Lawrence-Vacher in their letter of 30 September 2005.

Roof Replacement (£58,543.80 plus VAT)

49. This was the second occasion on which the Applicant had, in effect, sought permission from the tribunal to replace the roof. Mr Lawrence, giving evidence on behalf of the Applicant, considered that the roof had reached the end of its life and that replacement was essential to prevent wind-driven rain and pigeons from entering the lofts. He considered that there was a particular problem on the north wing where there was no sarking underlay, beneath the roof tiles. Mr Guraya produced a written survey report from Mr Simon Hands BSc, MRICS, Chartered Surveyor. That report was in part based on an inspection completed on 6 January 2006 and concluded that the roof was serviceable and not in need of replacement. That report was however of limited evidential weight because Mr Hands did not appear before us to answer our questions.

50. Although we accepted that Mr Lawrence gave his evidence in good faith, we found it extremely difficult to reconcile his expert witness report dated 14 March 2006 with his original condition survey based on inspections carried out between October and December 2004. The condition survey had been meticulous and yet it revealed no major failure of the roof covering. In respect of each roof slope it noted only minimal defects to the tiles and by way of remedy proposed only the renewal of the small number of broken or defective tiles identified. The condition survey wholly undermined Mr Lawrence's evidence given at the hearing. On the basis of that survey he could offer no satisfactory explanation for his current proposal that the roof be renewed. Furthermore, the specification of works, prepared by Mr Lawrence, proposed that 80% of the existing tiles would be re-used; again that did not indicate the substantial failure of the roof covering suggested by Mr Ward.

51. Mr Laurenz has lived in his top floor flat since 1950. He suffers from the noise created by the pigeons. His clear evidence was that the pigeons gain access to the lofts not through holes in the tiles, as suggested by Mr Ward, but through the eaves. Such an explanation was consistent with our own experience and inspection.

52. At the request of Mr Ward, we inspected three top floor flats where, it was suggested, we would find evidence of water ingress from the roof. In Flat 29 we observed extensive penetrating damp to the front wall. That was however clearly caused by the inadequate gutters referred to above and not by water leaking through the roof. This was confirmed by Mr De La Haye, who has the flat below, and told us that water *"cascaded down the wall"* during heavy rain. Although we noted some mould to the ceiling, it was apparent that this was caused not by leaks from above but by the humid conditions in the flat exacerbated by the high temperature and apparent lack of ventilation.

53. In Flat 39 we did observe some staining to the ceiling indicating a previous water leak. That had however been remedied and the ceiling redecorated. There was no evidence of continuing leaks.

54. Finally we visited Mr Laurenz's flat and again noted dampness to part of the front wall, which would have been caused by the defective guttering. There was again no evidence of any water damage to the ceilings, caused by leaks from above.

55. Mr Ward drew our attention to expenditure of nearly £17,000 on the roof during the last six years which, he suggested, indicated that the tiles had reached the end of their useful life. However, on investigation, we noted that most of this expenditure related to the previous replacement of the rainwater goods, the removal of pigeons from the lofts and the replacement of water tanks. The actual maintenance expenditure relating to the roof averaged approximately £330 per year. That was the sort of expenditure that we would expect for a roof of this size and did not indicate any major failure of the roof coverings.

56. From our own inspection, through binoculars, we could not identify any major defects in the roof coverings justifying replacement. It is had previously been

assumed that the *"Redland 49"* tiles used in the construction of the Property had a life expectancy of about 70 years and that they would be reaching the end of their natural life. Mr Lawrence however accepted that the *"tiles could potentially last for 100 years"* and he agreed that such defects as may exist in the tile covering could be dealt with by other means.

57. For each and all of the above reasons we concluded that the case for renewing the roof had simply not been made out and that the proposal was not a reasonable option. We agreed with the previous tribunal that there would come a time when the roof would have to be replaced but that time had not yet arrived. We were surprised that the Applicant had renewed this application only four years after the previous tribunal decision and without apparently having attempted to gain the approval of a majority of the lessees to the proposed course of action. We agreed entirely with the comment of the previous tribunal that *"a systematic planned maintenance programme was lacking"*.

Carpet Tile Stairs (£26,000 plus VAT)

58. As with the stairwell floors, it was proposed to carpet-tile the stairs. For the reasons set out in paragraphs 44 and 45 above, we concluded that the proposed cost could only be recovered under the B and C Leases. That however assumed that the cost was reasonably incurred. We inspected a number of the communal stairwells. The stairs were exceptionally steep and the treads very narrow. The stairs would not be permitted under current regulations. They are a hazard, which would be considerably exacerbated by the addition of carpet tiles or by full carpeting. Indeed we found the proposal to border on the irresponsible. Any costs incurred in undertaking the proposed work could not be said to have been reasonably incurred and consequently we concluded that no service charge would be payable in respect of such costs.

Tender and Consultation

59. The prices quoted above, in parenthesis, are those of Underpin & Makegood Limited in their priced specification, as updated by Mr Lawrence. They should not in themselves be regarded as reasonable costs for the itemised works. As observed at paragraph 23 the total cost had to be considered in the round. In any event the tender analysis undertaken by Mr Lawrence had been superficial. He had omitted to notice that the price estimated by Underpin & Makegood Limited for scaffolding was on a "per block" basis rather than for the whole Property. It was possible that if an appropriate adjustment to their estimated price was made, their tender might not remain the most competitive. To establish a reasonable cost the authorised work would have to be re-specified and re-tendered. In any event the consultation procedure would have to be repeated. The Notice of Intention did not appear to adequately describe the proposed work, whilst the proposal notice, for obvious reasons, had not included details of the estimate provided by the preferred contractor.

Section 20C Application and Fees

60. Mr Ward indicated that the Applicant would seek to recover through the service charge Mr Lawrence's fees of £1,692.81, the application and hearing fees of £500 and photocopying costs (in preparing the hearing bundles) of £602 at 25p per page. Those fees and costs were not however allocated between the first and second applications.

61. Mr Guraya sought an order limiting the recovery of those fees and costs through the service charge and in doing so he relied principally upon what he considered to be Mr Ward's failure to consult with all the lessees.

62. To the extent that costs might be recovered the right to recover them is a property right, which should not lightly be disregarded. Section 20C however provides that the Tribunal may *"make such order on the application as it considers just and equitable in the circumstances"*. We considered that those words permitted us to take into account the conduct of the parties in deciding whether to make an order.

63. As far as the first application was concerned the Applicant had abandoned its outstanding claim against the First Respondent and in such circumstances we had no hesitation in concluding that it should not recover its costs incurred in those proceedings from the First Respondent, through the service charge. Equally it would not be appropriate to order the First Respondent to refund any hearing fee paid on that application.

64. As far as the second application was concerned the animosity between the parties was such that the Applicant had no realistic alternative but to make its application to the tribunal. Although we had disallowed two major items of the proposed works, we agreed with Mr Ward's assessment that the majority of the proposed works were necessary to enable the Applicant to comply with its covenants, contained in the three Leases. This was not a case where it would be reasonable or appropriate either to limit the recovery of the Applicant's costs or to order the Second Respondents to refund the application and hearing fees. To the extent that these costs and fees could be recovered through the service charge provisions of the three Leases, we considered it appropriate that they should fall for recovery in that manner. Thus we made no order on either application.

Chairman: ..... (A J Andrew)

Date: 8 May 2006