RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

SECTION 27A APPLICATION

Case No. CH1/18UC/LSC/2008/0073

IN THE MATTER OF an Application under Section 27A of the Landlord and Tenant Act 1985 (as amended) and in the matter of 84a South Street, Exeter, Devon

BETWEEN:

	EXETER CITY COUNCIL	APPLICANT
	AND	
	MRS. DIANE HAZEL QUINN	RESPONDENT

PREMISES: 84A SOUTH STREET, EXETER, DEVON

TRIBUNAL:	MR. I. ARROW BA	Lawyer Chairman
	MR. T. DICKINSON BSc FRICS	Valuer Member

HEARING: 15th December 2008

APPLICATION AND DETERMINATION

1. The Applicant City Council applied to the Tribunal on the 31st July 2008 under Section 27A of the Landlord & Tenant Act 1985 (as amended) (The Act) to determine the liability to pay a service charge in respect of the reasonableness of repaving a balcony at 84a South Street, Exeter, Devon.

2. The Tribunal's decision in respect of these matters which are before it are confirmed in this determination for the reasons set out in the following paragraphs 3 – 11.

The Tribunal having inspected the property on the 15th December 2008 having carefully considered the work that had been done approximately a year before and having considered the documentation produced to it is satisfied the renewal of paving slabs to 84a South Street was reasonable and the service charge in respect of the work thereby carried out is payable.

Though not comprising part of the determination, the parties attention is drawn to the comments at paragraph No. 9.

THE LAW

3. The statutory provisions primarily relevant to applications of this nature are to be found in Sections 18, 19 and 27A of The Landlord and Tenant Act 1985. The Tribunal has regard in making its decision to the whole of the relevant Sections as they are set out in the Act but here sets out what it intends shall be a sufficient extract (or a summary as the case may be) from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent –

a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

b. the whole or part of which varies or may vary according to relevant costs"

"Relevant costs" are the costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression "costs" includes overheads.

4. Section 19 provides that:

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:

a. only to the extent that they are reasonably incurred, and

b. where they were incurred on the provision of services or carrying out of works only if the services or works are of a reasonable standard

and the amount payable shall be limited accordingly".

5. Subsections (1) and (2) of Section 27A of the Act provide that:

"(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to:-

a. the persons to whom it is payable
b. the person by whom it is payable
c. the amount which is payable
d. the date at or by which it is payable, and
e. the manner in which it is payable

(2) Subsection (1) applies whether or not any payment has been made."

6. To such an extent (if at all) that the point is not implicit in the wording of the Act, the Court of Appeal has laid down in Finchbourne v. Rodrigues (1976) 3 AER 581 CA that it could not have been intended for the landlord to have an unfettered discretion to adopt the highest possible standard of maintenance for the property in question and to charge the tenant accordingly. Therefore to give business efficiency to the Lease there should be an implied term that the costs recoverable as service charges should be fair and reasonable.

THE LEASE

7. The Respondent holds the property for the residue of term of years expiring on the 17th July 2130 granted by a Lease made the 21st November 1988 between Exeter City Council of the one part and Ellen Maude Badcock of the other part subject to a payment of a yearly ground rent of £10. The Respondent by Clause 3 of the Lease in particular paragraphs K and L covenants to pay the service charge as required by the Fourth Schedule of the Lease and the works to be carried out which are more particularly set out in the Fifth Schedule which inter alia would include repaving the balcony.

INSPECTION

8. The Tribunal inspected 84a South Street, Exeter at 10.30 a.m. on the 15th December 2008. Mr. Hopton from Exeter City Council was in attendance to identify the property, he left as soon as the Tribunal had identified the Flat and balcony in question. The Tribunal knocked twice on the Respondent's door but there was no reply. A neighbour spoke to the Tribunal.

The Tribunal saw an Estate which was divided into a number of maisonettes. The buildings were of brick faced construction. They were accessed from a staircase rising from the highway to balconies on the South elevations. The balconies had brick parapets with concrete copings.

The flats in the blocks inspected appeared to be in residential occupation.

At inspection the following matters were particularly noted by the Tribunal.

There were stout steel access gates to the first floor external staircases. The external staircases were of solid construction and appeared to be surfaced in asphalt. Some of this had bubbled. At the top of the staircase was a caution sign indicating pedestrians should be wary of the step.

At the top of the staircase set back by approximately the normal going was the edge of the new paving. There was a fillet of cement between the going of the step and the top of the new paving surface which approximated to a 45° slope. It appeared to have been bonded with grey paint. The fillet provided a flush feature. The Tribunal members attempted to catch their footing on this fillet but failed.

The Tribunal then inspected the paved balcony area.

The paved balcony area was paved with 600 x 600 mm x 50 mm grey concrete slabs. Where appropriate the slabs had been cut to fit around the concrete support posts for the drying lines. Slabs had also been cut to provide a border/gulley which had been filled with gravel.

The surface upon which the slabs had been laid was not available for inspection.

There had been significant heavy rainfall the previous weekend. There was no apparent pooling visible. The slabs were laid to a adequate fall so that the water ran to the outlet gulley running away from the accommodation.

The original type of paving was not available for inspection so no comparison could be made between the previous and present paving slabs.

There had been a slight settling of the slabs on the balcony area of 84A and this did in fact present a vertical face at the edges of slabs which created a minor tripping hazard. Settling is within the normal tolerances expected and might be remedied by relaying.

9. Whilst at the premises the Tribunal also noted that the joint to the gutter of the roof met immediately above the staircase and was leaking. This caused water to drip immediately to the top of the staircase and water was running down the staircase. Whilst it is not part of the Tribunals remit, the Tribunal noted that should that water freeze it would cause a significant hazard and was best remedied by fixing the leaking gutter joint.

PAPER DETERMINATION

10. The Tribunal met in private to discuss the Application on the paper documents and distinct issues arose from the documentation as presented. Each separate issue is identified by means of its own sub-hearing.

1. Thickness of the slabs. The new slabs would appear to be thicker than the original They are robust and utilitarian. It is likely they will provide a more durable surface than smaller lighter slabs.

2. Half step at the top of the staircase. The half step is protected by a concrete fillet and did not pose a tripping hazard to the Tribunal

3. A tripping hazard - see comment in 2 above. It is highlighted by the warning sign at the top of the staircase.

4. Visual amenity. The concrete slabs as laid are identical to those slabs laid on all the balconies in the immediate vicinity. They therefore create a uniform feature. Whilst they are of a utilitarian nature they are in keeping with the brick faced building and brick faced parapet with concrete coping.

5. Water flow – gravel. There is a distinct fall of the balcony surface towards the outlet gully. The gravel is provided to soak up the rainwater and did not despite the previous heavy rain create or show any defect in water flow to the Tribunal.

6. Reduction in value. Unfortunately the Tribunal was unable to see samples of the previous roofing material and had no evidence of the previous visual amenity. However for the reasons set out in the heading Visual amenity, the Tribunal did not consider there would be a material reduction in the value of the property. No comparibles had been brought to the Tribunal's attention.

REASONS

11. The Tribunal following its inspection and consideration of paper documents was satisfied that work as originally carried out had been carried out to a reasonable standard. The Tribunal did not consider the issues raised by the Respondent as answered in the previous paragraph item by item merited any reduction in the service charge payable.

Dated this 19th day of December 2008

Signed .....

Lawyer Chairman

I. M. Arrow.