LRX/36/2006

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – service charges – whether gardening and internal cleaning costs reasonably incurred – additional 25% deduction by LVT – use of LVT's own expertise as an expert tribunal – whether non-disputed charges included in LVT's award – disallowance by LVT of landlord's costs of LVT proceedings – appeal allowed – Landlord and Tenant Act 1985 ss 19(1) and 20C

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESMENT PANEL

BETWEEN **A2 HOUSING GROUP (FORMERLY AIRWAYS HOUSING SOCIETY)** **Appellant**

and

SPENCER TAYLOR AND OTHERS **Respondents**

Re: Flat 101,
Vickers Court,
Whitley Close,
Stanwell, Middlesex
TW19 7DG

Before: A J Trott FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL on 21 June 2007

Norman Joss, instructed by Coffin Mew LLP, for the appellant.
Mr Spencer Taylor in person and, with leave of the Tribunal, for the other respondents.

The following cases are referred to in this decision:

Forcelux Limited v Sweetman and Another [2001] 2 EGLR 173
Iperion Investments Corporation v Broadwalk House Residents Limited [1995] 2 EGLR 47
Arrowdell Limited and Coniston Court (North) Hove Limited [2007] RVR 39
Veena SA v Cheong [2003] 1 EGLR 175

DECISION

Introduction

1. This is an appeal by A2 Housing Group, formerly Airways Housing Society, (the appellant) against the decision of the Leasehold Valuation Tribunal for the Southern Rent Assessment Panel dated 21 December 2005 upon an application made by Mr Spencer Taylor of 101 Vickers Court, Whitley Close, Stanwell, Middlesex and 49 other tenants of blocks on the estate known as Northlands II. Mr Taylor and 18 other tenants responded to the appeal (the respondents). The appeal relates to the service charge payable by the respondents for gardening and internal cleaning services for the years ending 31 March 2003 and 31 March 2004.

2. Permission to appeal was granted by the LVT on 20 February 2006 on the grounds that "there are arguable points of law arising from the Tribunal's decision dated 21 December 2005." It was agreed by the parties at the outset of the hearing before this Tribunal that the appeal should be by way of review rather than a re-hearing.

3. Norman Joss appeared for the appellant. Mr Spencer Taylor appeared in person and, with the leave of the Tribunal, for the other respondents.

Facts

4. I derive the facts in this case from the decision of the LVT, as supplemented and amplified by reference to documents in the trial bundle before the LVT.

5. At the date of the disputed service charges the appellant was the Airways Housing Society, a charitable, non-profit making housing association with some 5,000 units under management on 180 mixed tenure estates in 19 different boroughs. Vickers Court is one of nine blocks on the Northlands II Estate which comprises a total of 242 flats. The other respondents in this appeal are tenants of other blocks on the estate including Shackleton Court (three tenants), Fleetwood Court (seven), Clifton Court (two), Sunderland Court (two), Vanguard House (one), Bristol Court (one) and Wessex Court (two).

6. The lease of 101 Vickers Court, which was the only lease submitted in evidence, is for a term of 99 years from 24 March 1975 at a ground rent of £10 per annum. Under Clause 5(2) of the lease the landlord covenants, inter alia, to clean the common parts of the building. Under Clause 5(3) it covenants to tend and cultivate the landscaped communal areas and gardens. The leaseholder covenants to pay the service charges (including VAT) as defined in the Sixth Schedule. In the case of 101 Vickers Court (Mr Taylor's property) the service charges payable by the leaseholder comprise 3.57% of the Building Service Charge and 0.42% of the Estate Service Charge. The percentage of the Building Service Charge payable by the respondents

varied according to which block the leaseholder occupied whereas the percentage of the Estate Service Charge was the same for all leaseholders. An Interim Charge is paid on account by means of four equal instalments payable on each quarter day with certified accounts being provided after 31 March each year.

7. In the past the appellant provided internal cleaning and gardening services in a variety of ways across its estates. It used separate contractors covering various random groupings of estates and also directly employed caretakers on a variety of terms and conditions including one resident caretaker (at Manor Court, Weybridge), part-time caretakers and a mobile caretaker (who covered more than one estate). At Northlands II Estate D&S Maintenance Cleaning Service undertook the internal cleaning services until they left the area without notice. Sandy Twaddle, the mobile caretaker, then took over the cleaning of the estate on an overtime basis. DMW Landscape Gardeners undertook the estate gardening services. For the year ending 31 March 2002 the total estate cleaning cost was £2,992.51 and the estate gardening costs were said to be £987.

8. During 2000/01 the appellant began a review of its estates services and in August 2001 appointed Mr Scott Black as Housing Operations Manager. In January 2002 Mr Black appointed Rand Associates Consultancy Services Limited to advise the appellant on a tender for new term contracts for both internal cleaning and landscape (gardening) maintenance for all of the appellant's housing estates. Ten contractors were invited to tender by letter dated 10 July 2002. Three contractors returned tenders by the deadline of 9 September 2002 only two of which were compliant bids. Rand Associates recommended the appointment of ISS Public Services. Their tender, whilst the lowest price, was considerably in excess of the budget set by the appellant and so the specification of services was amended and a revised tender price obtained:

	Cleaning	Gardening
Original specification	£553,867.51	£779,954.68
Amended specification	£248,442.45	£363,477.67

The contract was awarded to ISS on 30 January 2003. The gardening costs for the Northlands II Estate for the years ending 31 March 2003 and 2004 were £11,904.78 and £31,758.25 respectively. No equivalent figures for the internal cleaning costs of that estate were submitted in evidence but the block costs of Vickers Court for those years were £1,046.05 and £3,505.16 respectively.

9. The LVT directed the respondents on 9 June 2005 to produce quotations for both gardening and internal cleaning services from up to five alternative suppliers based upon the original ISS tender specification, but in respect of the Northlands II Estate only. The quotations received were:

(i)	Internal Cleaning	
	Academy Cleaning and Maintenance Limited	£9,360 + VAT pa
	AMC Cleaning Services Limited	£13,988 + VAT pa
	Bourne Valley Cleaning Services	£11,424 + VAT pa
(ii)	Garden Maintenance	
	Garden Matters Limited (Or on the basis of an improved specification)	£10,720 + VAT pa (£12,780 + VAT pa)
	Garden Keepers	£9,020 + VAT pa

The LVT's decision

10. The LVT began its decision by considering the legal submissions made by Mr Joss and, in particular, the application of the decision in *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173. It accepted the appellant's argument that the LVT was concerned with whether the costs in issue had been reasonably incurred and acknowledged that there were some circumstances where the expenditure on relevant costs would not necessarily be the cheapest. It continued:

> "18. …However, the Tribunal also took note of the comments in *Forcelux*: that it was necessary to consider, in the light of all the evidence, whether the landlord's actions were appropriate and whether the amount charged was reasonable in the light of that evidence, otherwise it would be open to a landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.
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> 19. The Tribunal took particular note of this last point. In the circumstances of this case, it considered that in order properly to test the market, it was necessary for the Respondent [appellant] to look at other ways of providing gardening and cleaning services through local contracts serving single estates such as Northlands II, before entering into a single contract.
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> 20. Whilst recognising that a single contract was the Respondent's preferred option, and without criticising the Respondent's stated objectives, the Tribunal considered that given the wide geographical spread, the distances and differences between the 19 boroughs referred to in the Specification, and the very substantial increase in costs, it was unreasonable not to pursue alternatives as part of testing the market.
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> 21. Certainly, by the time of the tender report, it was clear that the proposed costs were so far in excess of the charges previously incurred, that the Respondent ought reasonably to have explored other possibilities. …"

11. The Tribunal continued by expressing no surprise that only two of the tenderers had submitted bids and said that, even after renegotiation with the successful bidder, the proposed costs were "exceptionally high" and "much higher than before". They also noted that the appellant had contemplated the possibility of letting separate contracts for gardening and cleaning services. It continued:

> "23. The Applicants [respondents] had demonstrated, by obtaining their alternative quotations from single local contractors, that it was possible to provide gardening and cleaning services to the specified tasks and frequency, for Northlands II, at significantly less cost to the service charge account.
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> 24. For these reasons the Tribunal concluded that the gardening and cleaning costs were not reasonably incurred. Although the single contract was its preferred option, this could not be licence to charge a figure that was out of line with the market for local suppliers.
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> 25. In this regard, the Tribunal gave due weight to the alternative quotations provided by the Applicants. They had made considerable efforts, in good faith, to obtain realistic quotations from experienced local contractors on a like-for-like basis. All their contractors had inspected the estate and provided written quotations. For these reasons the Tribunal found this evidence useful to assess what would be a reasonable cost in the local market for the gardening and cleaning services at Northlands II."

12. The LVT then considered in detail the reasonableness of the amounts charged. In doing so it said that the specification was not "gold plated" but that the Applicants "were entitled to expect a higher standard of service for the amount charged". The LVT made a number of deductions from the amounts charged both for gardening and cleaning services. It then said in respect of its determined gardening costs:

> "28. …A further deduction from this figure was necessary to reflect central costs included in the ISS quotation, since it was such a complex contract covering a wide area. The Tribunal decided a notional 25% reduction, …, was fair and reasonable in these circumstances."

The LVT made a similar 25% reduction in its figure for cleaning costs.

13. The LVT then considered the Applicant's application for an order to be made under section 20C of the Landlord and Tenant Act 1985:

> "34. Section 20C of the 1985 Act provides that the Tribunal may 'may make such an order on the application as it considers just and equitable in the circumstances.' In the circumstances of this case, the Tribunal decided that it would not be just and equitable to allow the Respondent to include its costs as part of any future service charge account, because the Applicants had succeeded in their application.
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> 35. Accordingly the Tribunal makes the requested order under Section 20C"

14. The LVT determined that the following amounts (inclusive of VAT) were payable by the respondents, in accordance with the proportions shown in their leases:

(i)	Year ending 31 March 2003	
	Gardening (February and March) (Previous months not disputed)	£2,375
	Cleaning (February and March) (Previous months not disputed)	£2,393
(ii)	Year ending 31 March 2004	
	Gardening	£14,250
	Cleaning	£14,360

The case for the appellant

15. Mr Joss explained that the appellant was not disputing the findings of the LVT in making deductions from the amounts charged for gardening and cleaning services where those deductions reflected the value of the services actually provided. It disputed the further "notional 25% reduction" that the LVT had made to reflect what it described as central costs included in the ISS quotation. The appellant was therefore prepared to accept the following ISS costs:

	Year ending 31/3/2003 (Feb and Mar 2003 only)	Year ending 31/3/2004
Gardening	£2,695 + VAT	£16,170 + VAT
Internal Cleaning	£2,716 + VAT	£16,296 + VAT

In addition the appellant submitted that the cost of gardening and internal cleaning services for the period April 2002 until January 2003 (inclusive) was also recoverable by way of the service charge. Although the LVT had recorded these charges in its decision as "previous months not disputed" it had not explicitly included them in its award.

16. Mr Joss submitted that the LVT had not invited any evidence on whether there should be a discount for central costs. He accepted that the LVT was an expert tribunal but said that it had no jurisdiction to introduce evidential matters without reference to the parties and should not have done so in this case. Mr Joss also submitted that by deducting a further 25% the LVT had undermined its own decision. It had reached a conclusion about what constituted reasonable costs for gardening and internal cleaning services by exercising its valuation expertise. To make a further deduction from what was already determined to be a reasonable figure was wrong in principle. Either the costs of gardening and internal cleaning were reasonable at £16,170 and £16,296 respectively or they were not. The LVT had made a double deduction and was wrong to have done so. Mr Joss suggested that the LVT might have made such an additional deduction to bring its decision more in line with the other quotations obtained by the respondents.

17. The main issue for the appellant was the LVT's decision that the costs under the single contract with ISS had not been reasonably incurred and its criticism of the appellant's failure to seek tenders for separate contracts for individual services and/or estates as part of testing the market. In the LVT's opinion it was necessary for the respondent to look at other ways of providing the services through local contracts serving single estates such as Northlands II before entering into a single contract covering all of its estates.

18. Mr Joss submitted that the LVT had not criticised the objectives of the appellant in letting a single contract. It had summarised these in its decision and, having decided that the appellant's objectives were reasonable, the LVT was wrong to have held that the appellant should have tested the market by reference to a dual or multiple contractor approach. The appellant, through previous experience, had found such an approach to be unsatisfactory and unworkable. The LVT had wrongly regarded the market to be tested as the market supply of all services generally and at all scales of supply, from small local contractors only able to supply individual estates to large single contractors able to service all of the appellant's property. The LVT should have been concerned only with the particular market for the supply of services by a single contractor. It should have focussed on the reasons why the appellant wished to enter into such a single contract and the process by which it did so rather than concentrate on the fact that the cost was higher than under the previous unsatisfactory method of supplying the services.

19. The LVT directed the respondents to produce up to five alternative quotations for the internal cleaning and gardening contracts based upon the same specification as that used by the appellant in its tender of the single contract. Mr Joss submitted that any such alternative contractors would have had to tender on the basis of the appellant's objectives, unless those were unreasonable. The appellant's evidence before the LVT, which Mr Joss reviewed, was that of the five alternative contractors approached by the respondents, only one, Academy Cleaning and Maintenance Limited, might have satisfied any reasonably rigorous contractual obligation (although this was not admitted). The other four alternative contractors would not have qualified to tender for the services since they could not demonstrate the business pedigree or financial security to protect the tenants or to achieve the landlord's aspirations to properly administer a contract.

20. The LVT concluded that the alternative quotations obtained by the respondents showed that it was possible to provide the specified services to the Northlands II Estate at a significantly reduced cost. But these quotations were not comparable to the appellant's chosen tender. They were different animals. In *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173 this Tribunal (Mr P R Francis FRICS) had dealt with a similar point in respect of insurance premiums and had said at paragraph 43:

> "In all the circumstances therefore, I determine that the costs of the premium for the two years in question were reasonably incurred and that there was no evidence from which I could conclude the costs were excessive. The quotes obtained by the respondent lessees were not on a like for like basis, and while the cover may have been comparable …, the lessees were in a different category to a commercial landlord. A direct comparison is not, therefore, appropriate."

The fact that the services were being provided at a higher cost did not undermine the single contract. It simply meant that the appellant's action in providing the services in a way that it was reasonably entitled to do was only open to criticism in terms of its cost if those services could be provided at a materially lower price. But the quotations obtained by the respondents at the direction of the LVT were in respect of the very system of individual contractors providing a single service for a single estate that the appellant reasonably did not want. The market price at which the appellant's uncriticised objectives could be met was that negotiated with ISS following a tender process. The alternative quotations related to a different market and were not comparable with the ISS contract.

21. Mr Joss submitted that the correct approach towards the service charge for the two disputed years, and for subsequent years, was to examine the value of work done under the ISS contract. The LVT had, using its expertise, found that for the years ending 31 March 2003 and 2004 the value of work actually done was not equal to the ISS tender price and had made deductions accordingly. The appellant accepted this. But if in the future the services were provided according to the ISS contract specification then the appellant was entitled to recover the amount for those services that it paid under that contract, that amount having been shown to be reasonable and based upon the market rate.

22. The appellant resisted the respondents' application for an order under section 20C of the Landlord and Tenant Act 1985. Mr Joss relied upon the case of *Iperion Investments Corporation v Broadwalk House Residents Limited* [1995] 2 EGLR 47 and argued that in exercising its discretion under section 20C(3) this Tribunal should have regard to the outcome of the proceedings and to the conduct of the parties. It was not the case that costs should simply follow the event. The LVT had made a section 20C order in favour of the respondents solely upon the basis that they had had a measure of success. That was not a proper exercise of its discretion. It should have considered the appellant's reasons for adopting the single contractor option and its method of appointing the contractor. It should also have had regard to the importance of the proceedings to the appellant and to the fact that it is a non-profit making registered social landlord. The appellant's conduct before the LVT and this Tribunal had not been improper or unreasonable. In its appeal to this Tribunal the appellant had not attacked the LVT's decision about the value of work done and Mr Joss submitted that it was not a reasonable proposition for the respondents to argue that they had not realised that this was the appellant's position. The appellant's appeal was reasonable in terms of its defence of the single contract, its challenge to the LVT's notional additional deduction of 25% and in seeking clarity about the payment of the charges in respect of the first 10 months of the year ending 31 March 2003. It had undertaken some consultation with the tenants about its proposals which it had not been required to do at the time of the disputed service charges.

The case for the respondents

23. Mr Taylor said that the respondents had been unaware that the appellant was not challenging the deductions from the service charges made by the LVT but was only contesting the additional 25% deduction in respect of central costs. The respondents had believed that the appellant was challenging the totality of the LVT's decision. Had they known that this was not

the case they may have been able to avoid this appeal. Mr Taylor acknowledged that he did not know why the LVT had made the additional 25% deduction although he surmised that it had taken account of the smaller overheads that a local contractor would have when compared to those of a major contractor such as ISS.

24. The LVT acknowledged that the appellant had distributed a consultation newsletter in May 2002. But only 16 out of 242 tenants from the Northlands II Estate had responded to it and although 13 of these responses were in favour of the proposed changes this was not a significant enough representation of the estate to effect a change of this magnitude. The LVT noted that the respondents had hotly disputed the adequacy of the consultation process. Mr Taylor referred to the appellant's three key objectives for the estates services review as described in that newsletter. The second of these was to ensure that the costs of the services represented good value for money. He queried how a ten-fold increase in the cost of gardening services satisfied that objective. The third objective was to be able to give residents a degree of choice over services but the respondents had been presented with a fait accompli, namely the selection of a single contractor. One estate, at Manor Court, Weybridge had retained its previous arrangement of a resident caretaker due to lobbying by its residents. But the tenants of Northlands II had not been afforded a similar opportunity to keep the existing suppliers of services. Either the single contract should have applied to all estates or alternatively every estate should have been treated the same in terms of having an option to keep the existing arrangements.

25. Mr Taylor said that he could see the relevance of the decision in *Forcelux* to the proceedings but submitted that there was an order of magnitude difference between that case, involving two flats, and the subject appeal which involved an estate of 242 units and a ten-fold increase in its service charge.

26. The appellant had criticised the alternative quotations obtained by the respondents but they had been asked to provide these following directions from the LVT. Each contractor had been asked to quote on the basis of the appellant's specification but only for the Northlands II Estate. The quotations had been obtained for the purposes of benchmarking the likely costs of providing the services on the basis of a single estate contract and had not actually been intended to be for the purposes of use in such a contract. The respondents had not had enough information to be able to seek alternative quotations for a single contract covering all of the appellant's estate.

27. Mr Taylor referred to graphs produced by the respondents before the LVT that showed a substantial increase in both internal cleaning and gardening costs between the years 2001/02 and 2003/04. He said that such an increase was due to the implementation of the new single contract with ISS.

28. The LVT acknowledged that the contractors who had previously undertaken the gardening services at the Northlands II Estate, DMW Landscapes, were one of the ten contractors invited to bid for the single contract. Mr Taylor surmised that DMW had not submitted a bid because it was not able to compete for a contract covering all of the appellant's

estates. It appeared that the appellant had not tried to test the market by splitting the services into two contracts, one for internal cleaning and one for gardening. Mr Taylor submitted that this would have allowed for a wider variety of contractors to bid and for a more affordable solution to be found.

29. Mr Taylor said that the respondents had represented themselves to the best of their ability and had tried to find a solution to the dispute. They had been advised to apply to the LVT but the appellant had never raised the possibility of arbitration under the lease. They considered that they had had no option other than to pursue this appeal. It would be unfair to burden the respondents with the costs of the appellant before the LVT by overturning the section 20C order. They had paid their share of the service charges and for the appellant to recoup its costs (which were unnecessarily high due to the instruction of counsel) would not be fair to the residents.

Conclusions

30. I deal firstly with the appellant's submission that the LVT was wrong to make an additional deduction of 25% from the value of the services actually provided. In *Arrowdell Limited and Coniston Court (North) Hove Limited* [2007] RVR 39 the Tribunal (the President and Mr N J Rose FRICS) said at paragraph 23:

> " It is entirely appropriate that, as an expert tribunal, an LVT should use its knowledge and experience to test, and if necessary to reject, evidence that is before it. But there are three inescapable requirements. Firstly, as a tribunal deciding issues between the parties, it must reach its decision on the basis of evidence that is before it. Secondly, it must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. Thirdly, it must give reasons for its decision."

In my opinion the LVT failed to satisfy these requirements. The parties agreed that no evidence had been put to the LVT about a further deduction for what it described as central costs included in the ISS quotation. Nor were the parties given the opportunity to comment upon the LVT's determination in this respect. Furthermore the LVT did not give adequate reasons for its decision commenting only that the ISS contract was "such a complex contract covering a wide area". No reason was given for the assessment of the deduction at 25% other than the statement that the LVT considered it to be "fair and reasonable in these circumstances". I do not consider that the Tribunal was entitled to reach this conclusion on the basis of the evidence before it. It was wrong to have done so and I disallow the additional deduction in both internal cleaning and gardening charges. Having reached this conclusion it is not necessary for me to consider the appellant's alternative argument that the LVT had wrongly made a double deduction in respect of the costs.

31. The parties agreed that the service charges for internal cleaning and gardening for the year ending 31 March 2003 should include the undisputed costs of service provision for the months prior to the award of the ISS contract. The LVT did not state in terms that these amounts were payable and the appellant requested clarification that this was so. I confirm that the undisputed costs for April 2002 to January 2003 (inclusive) in respect of both internal

cleaning and gardening are payable as part of the service charges for the year ending 31 March 2003 (although the amount of these undisputed costs was not identified at the hearing).

32. The appellant identified the main issue in this appeal as being the LVT's ruling that the appellant had not reasonably incurred the gardening and internal cleaning costs under the single contract with ISS. The LVT held that the appellant was unreasonable in not pursuing alternatives as part of testing the market. The use of a single contract to cover all the appellant's estates "could not be licence to charge a figure that was out of line with the market for local suppliers".

33. In reaching this conclusion the LVT had regard to *Forcelux* in which the Member, Mr P R Francis FRICS, stated:

> "39. In determining the issues regarding the insurance premiums and the cost of major works and their related consultancy and management charges I consider firstly Mr. Gallagher's submissions as to the interpretation of s.19(2A) of the 1985 Act and specifically his argument that the section is not concerned with whether costs are *'reasonable'*, but whether they are '*reasonably incurred'*. In my judgment his interpretation is correct, and is supported by the authorities quoted. The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
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> 40. But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. Firstly the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.
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> 41. It has to be a question of degree, and whilst the appellant has submitted a well reasoned and, as I have said, in my view a correct interpretation of 'reasonably incurred', that cannot be a licence to charge a figure that is out of line with the market norm."

34. This point was considered further by this Tribunal in *Veena SA v Cheong* [2003] 1 EGLR 175. The member Mr P H Clarke FRICS, said at paragraph 103:

> "The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable. The question in this part of the appeal is whether Veena acted reasonably in employing a full-time porter and a part-time cleaner and, if so, whether the amounts charged for those services were reasonable. Both parts of the question must be answered affirmatively for Veena to succeed."

In the present appeal what falls to be determined is whether the appellant acted reasonably in letting a single contract for the supply of comprehensive services to all of its estates and, if so, whether the amount charged under that contract was reasonable.

35. The LVT recognised that a single contract was the appellant's preferred option and did not criticise the appellant's objectives which the LVT said "were to improve the delivery of the services and also to simplify the management". It also accepted that the specification for the single contract was not "gold plated". The LVT baulked at the significant increase in costs that acceptance of such a contract entailed and determined that the appellant should have looked at other ways of providing the services through local contracts serving single estates. I agree with Mr Joss that this approach is contradictory. The appellant explained to the LVT the problems that it faced by continuing to use individual contractors for single estates and which had given rise to the objectives. The LVT said that:

> "16 (iv) The Respondent [appellant] had identified several issues across its estates that needed to be addressed: problems of using small one-man outfits with lack of capacity and falling standards; lack of properly agreed contracts, performance standards or default penalty provisions; more rigorous health and safety requirements."

The appellant's unsatisfactory experience of such single estate and/or service contracts had established that their continued use would obstruct the very objectives that were tacitly accepted by the LVT. The LVT did not address these problems in its decision and failed to explain how they would be resolved by the use of individual contractors on single estates.

36. The alternative quotations obtained by the respondents were said by Mr Joss to be, with one possible exception, from local contractors whose financial and trading status were, on reasonable grounds, unacceptable to the appellant. The LVT had noted these concerns in its decision and referred to the appellant's reliance upon company searches in casting doubt upon the capability of these contractors and which "suggested a lack of financial stability which was not acceptable". However, the LVT whilst noting the appellant's reservations about the ability of the alternative contractors to provide the services on the terms and conditions specified in the tender did not address them in reaching its conclusion. They were either ignored or given no weight. In my opinion the LVT was wrong not to attach more weight to the appellant's evidence about the inability of the alternative contractors to provide an adequate level of service. I consider the appellant's criticism of the LVT on this point to be well founded and persuasive.

37. In considering whether the amount charged for the single contract was reasonable it is necessary to ensure that the market has been properly tested. In my judgment that market is defined by reference to the suppliers capable of complying with the specification for a single contract for all of the appellant's estates and not by reference to the suppliers of individual services to individual estates. The two markets are not the same and the LVT was not comparing like with like when it said that the tender for the single contract should not be out of line with the market for local suppliers. In my opinion the appellant properly tested the market for a single contract. It appointed independent advisers to help prepare the specification and

tender, it invited ten contractors to bid, it received two compliant bids and negotiated with the successful bidder to amend the specification and to achieve an overall reduction in cost of more than 50 per cent.

38. I conclude that the charges under the single contract with ISS were reasonably incurred for the purposes of section 19(1) of the Landlord and Tenant Act 1985 and I accept the appellant's calculation of those charges as set out in paragraph 15 above. These amounts are therefore payable by the respondents for the years ending 31 March 2003 and 2004 together with the undisputed amount of the service charges for internal cleaning and gardening services for the months April 2002 to January 2003 (inclusive).

39. The appellant submitted that there should be no order made under section 20C of the 1985 Act in respect of the costs incurred by it in connection with the proceedings before this Tribunal. The respondents argued that the appellant had not made its position clear regarding its acceptance of the LVT's adjustments to the service charges to reflect the actual value of work done. Had it done so the respondents said that they might not have responded to the appeal. I agree with the respondents that the appellant did not set out its position in terms in its grounds of appeal or statement of case. But the respondents do not appear to have sought clarification of this point. Moreover, it was evident that the appellant opposed the LVT's decision that the relevant costs had not been reasonably incurred. In this, as well as the other grounds of its appeal, it has been successful. In all the circumstances I consider it just and equitable that no order under section 20C should be made in respect of the proceedings before this Tribunal.

40. The LVT made a section 20C order in respect of the original application by the respondents. They did so on the grounds that the respondents had succeeded in their application. I have determined that the LVT was wrong to make an additional deduction of 25% from the value of the services provided and in holding that the appellant had not reasonably incurred the relevant costs. It is therefore necessary for me to exercise afresh the discretion to make an order under section 20C in respect of the costs incurred by the appellant in connection with the proceedings before the LVT.

41. Whilst I have found that the LVT was wrong in its decision, the consequence of the appellant's acceptance of the LVT judgment regarding the actual value of work done means that the respondents have still had a significant measure of success in their original application. The gardening and internal cleaning costs have been reduced by 37% and 42% respectively from the amounts originally charged. The appellant argued that this is not the sole criterion for determining whether a section 20C order should be made and that a wider range of factors (summarised in paragraph 22 above) should be taken into account. I have considered these other factors and also an additional one, namely the appellant's consultation with the respondents.

42. The appellant was not obliged under the 1985 Act to consult with the respondents about its letting of the single contract. It did, however, undertake a limited consultation by means of a newsletter distributed in May 2002. In my opinion that document suggested a greater degree

of tenant involvement in the estate services review than the appellant was prepared to give. It said that the review had as one of its key objectives "to be able to give residents a degree of choice over services". It also said that the appellant would involve residents in comparing the quality and costs of the services. Mr Joss argued that this meant consulting residents after, not before, the single contract had been let but I do not consider this to be a reasonable interpretation of the wording of the newsletter. He also stressed the importance of this matter to the appellant but I believe that it is equally important to the respondents. I consider that the consultation exercise was apt to mislead and the unfortunate consequence of the newsletter was that the respondents saw the increase in service charges as an unpleasant (if unintended) fait accompli. I conclude that, in all the circumstances of this case, it is just and equitable that an order under section 20C of the 1985 Act is made in respect of the costs incurred by the appellant in connection with the proceedings before the LVT.

Dated 12 July 2007

A J Trott FRICS