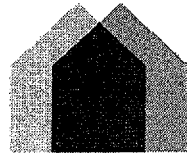


2657



Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE  
LANDLORD AND TENANT ACT 1987, AS AMENDED**

---

**Ref: LON/00AL/LSC/2006/0161**

**Property:** 7 Rosedale Close, Abbey Wood, London, SE2 9PE

**Applicant:** Mr C Weerasenghe

**Respondent:** London Borough of Greenwich

**Inspection date:** 4 September 2006

**Hearing Dates:** 4 and 5 September 2006

**Appearances:** Mr C Weerasenghe  
Mr R A Wimalasekera FRICS

**for the Applicant**

Mr P Wilson, Property Officer  
Mrs K Richardson, Capital Works Manager  
Mrs K Rowlands, Senior Collections Officer

**for the Respondent**

**The Tribunal:** Mrs J S L Goulden JP  
Mr P S Roberts Dip Arch RIBA  
Dr A M Fox BSc PhD MCI Arb

---

PROPERTY: 7 ROSEDALE CLOSE, ABBEY WOOD, LONDON, SE2 9PE

BACKGROUND

1. The Tribunal was dealing with the following applications dated 1 May 2006:-
  - (a) An application under Section 27A of the Landlord and Tenant Act 1985, as amended ((hereinafter referred to as "the Act") for a determination whether a service charge is payable and, if it is, as to –
    - (a) the person by whom it is payable
    - (b) the person to whom it is payable
    - (c) the amount which is payable
    - (d) the date at or by which it is payable
    - (e) the manner in which it is payable
  - (b) An application under Section 20C of the Act to limit landlord's costs of proceedings before the Tribunal.
2. The lease under which 7 Rosedale Close, Abbey Wood, SE2 9PE is held is dated 11 June 1990 and made between The Mayor and Burgesses of the London Borough of Greenwich (1) and S W Firmin and K E Firmin (2) for a term of 125 years from 11 June 1990 at a peppercorn rent and on the terms and conditions therein contained. The Assignment of that lease to the Applicant is dated 30 September 2002.
3. In the Respondent's Reply to the Statement of Case, the background to the dispute was explained as follows:-

*"The Respondent carried out major works to the Applicant's block during the 2005/6 service charge year pursuant to a contract of works covering the subject block and other properties in Byland Close, Eynsham Drive and Penmon Road in Abbey Wood.*

*At the time that the Applicant purchased the Flat, the Respondent gave notice, in response to enquiries from the Applicant's solicitor, that works to the roof and balconies of the block may take place in the next five years ...*

*The works were originally planned by the Respondent in March 2005 as part of its capital works programme for 2005/2006, and particularly for the purpose of complying with its Decent Homes obligations in respect of the properties ...*

*Notice of Intention to carry out the works was given to the Applicant on 22 March 2005, and subsequently a Notice of Estimates was sent to the Applicant on 9 August 2005 setting out a description of the works, the estimated cost of the works and the estimated contribution of the Applicant to the works under the Lease ...*

*The contract was procured in accordance with the Respondent's standard procedure for major works contracts, in which six contractors are invited to tender for the works. The procurement of the contract is then approved by the Respondent's Neighbourhood Services directors panel ...*

*On 27 October 2005 the Respondent issued an invoice for the estimated cost of the work, which is subject to adjustment on production of the final account for the work. The defects period under the contract is not yet complete, and accordingly final account figures are not yet available ..."*

4. The description of the works in the Section 20 Notice insofar as they affected the Applicant was as follows:-

- "> The provision of a new flat roof covering and edge protection to the blocks*
- > Provision of new PVCU double glazed windows to dwellings, where single glazed presently exist*
- > Provision of new front entrance doors and composite screens (where necessary)*
- > Replacement of soffits and rainwater goods (where necessary)*
- > Provision of roof ventilation (where necessary)*
- > Upgrade of roof insulation (where necessary)*
- > Provision of cavity wall insulation (where necessary)*
- > Brickworks repairs to block including chimney (where necessary)*
- > Concrete repairs to block (where necessary)*
- > Provision of concrete ramps/steps to block entrance (where necessary)*
- > Communal redecoration (including all associated pre-decoration repairs, where necessary)*
- > External redecoration (including all associated pre-decoration repairs, where necessary)*
- > Removal of asbestos containing material deemed hazardous (where necessary)"*

## **INSPECTION**

5. Rosedale Close ((hereinafter referred to as "the block") was inspected on the morning of 4 September 2006 in the presence of Mr C Weerasenghe (No 7) and Mr R A Wimalasekera FRICS for the Applicant and Mr P Wilson for the Respondent. It was a three storey concrete framed flat roofed block with exposed brickwork to the upper storey forming part of a large 1960s estate, which was somewhat run down. The estate was a mixed development consisting in the main of single storey bungalows and two storey maisonettes over commercial and community facilities.
6. The ground floor of the block was taken up by a council neighbourhood office and health clinic. The neighbourhood office and health clinic did not appear to have been redecorated and were covered in graffiti. Cast iron rainwater goods to the rear were severely rusting in places. Graffiti was also noted on many of the other properties forming part of the estate. On one side of the property was an open paved area bounded by a single storey garage block.

Litter was noted on the open grassed area nearby, and also on other parts of the estate.

7. There were eight maisonettes on the second and third storeys of the block, seven of which were tenanted. The Applicant's maisonette (No 7) was the only one held on a long lease. The common parts, entry to which was by answerphone, were spartan, but appeared to have been recently redecorated. There was a timber glazed framed entrance screen with main entrance door which was not glazed.
8. The Tribunal was invited to inspect the external decorations including the tiling adjacent to the communal entrance, concrete repairs to communal areas, rainwater goods, roof access door (the roof was unable to be inspected), trunking to the access balcony soffits, windows to the Applicant's maisonette and the main entrance door glazing. Some pooling was noted to the balcony rainwater channel, especially outside No 7. The Tribunal noted that new steel balustrading had been installed to the balcony access walkway, and the adjacent asphalt surfaces made good. The Tribunal also noted new galvanised trunking on the access balcony walkway and replacement UPVC windows to all the maisonettes other than No 7. The windows to No 7, which appeared to be in sound condition, had timber frames with leaded lights.

#### **HEARING**

9. The Hearing took place on 4 and 5 September 2006.
10. The Applicant, Mr C Weerasenghe, appeared in person and was assisted by Mr R A Wimalasekera FRICS. Mr Wimalasekera did not appear as an expert.
11. The Respondent, the London Borough of Greenwich, was represented by Mr P Wilson, Property Officer, Mrs K Richardson, Capital Works Manager and Mrs K Rowlands, Senior Collections Officer, all of Home Ownership Services.
12. The matters in issue related to the Abbey Wood Eynsham Centre major works contract 1809, the estimated cost of which had been placed on the 2005/2006 service charge account and related to 1-10 Boyland Close, 144-178 Eynsham Drive, 4-42 Penmon Road and 1-12 Rosedale Close. The tendered contract sum was stated to be £1,083,279.00 upon which it was estimated that the shared cost over all the blocks was stated to be £286,031.04 and the estimated rechargeable cost over all the blocks was £526,786.69. The proportion originally demanded of Mr Weerasenghe in respect of the estimated costs had been £20,691.10 (24 October 2005), but this had been revised to £11,936.55 (31 July 2006).
13. An adjournment was provided in order that the parties could discuss the issues in order to explore whether they could resolve their differences or narrow the issues. This did not prove successful.
14. Mrs Richardson, for the Respondent, explained that the proposed charges were estimates only and would be adjusted when the final account had been presented by the contract administrator, Dearle & Henderson. After a short

adjournment was given towards the end of the first day's hearing in order that she could make further telephone enquiries, Mrs Richardson advised the Tribunal that the final account would not be issued for approximately a further six weeks. Mrs Richardson was requested to see if further information could be obtained overnight in order to assist the Tribunal, and she promised to do this.

15. At the second day's hearing, on 5 September, Mrs Richardson was able to advise the Tribunal that certain works which had appeared on the specification had not been carried out, and therefore there would be an adjustment to the final account, when the actual figures were known. In the meantime, the Tribunal was only able to deal with **estimated** costs as tendered and included in the priced specification as prepared as prepared by the contract administrator as opposed to **actual** costs which would appear on the final account. This is important because some of the items were challenged by the Applicant not on the basis of whether it was reasonable to include them, but whether they had been carried out. The Tribunal also considered whether the items of work disputed by the Applicant should have been included in the contract at the outset, bearing in mind that they included works to mixed use and mixed size blocks, as evidenced at inspection.
16. The estimated amount demanded of Mr Weerasenghe had been reduced from £20,691.10 to £11,936.55. In answer to questions from the Applicant and the Tribunal, Mrs Richardson explained that Nos 1-4 Rosedale Close were bungalows and did not form part of the building as defined in the lease under which the Applicant held his maisonette. Of the remainder the works related in the main to the maisonettes and only the cost of a few specific items, namely the new roof covering, roof access doors, new lightning conductor and rainwater goods, fell to be shared with the ground floor premises. The Respondent had allowed for these factors in the revised demand by removing the cost of all works to the bungalows and, as a concession, one third of the cost relating to the ground floor. She confirmed that at the time the consultation process had been carried out, some 11,700 notices had been sent out that year causing heavy pressures on staff. Accordingly, the block had not been inspected by Home Ownership Services and the Respondent had relied only on plans and drawings from the technical specification. Mrs Richardson said that, at that time, the Home Ownership Services had not appreciated that the maisonettes in the block were over commercial properties. She also confirmed that no work had been carried out to the neighbourhood housing office and the health clinic on the ground floor under the contract.
17. Mrs Richardson said that the charges relating to gas safety certificates had been entered in error and would be deleted. Further, the Applicant confirmed that he was not challenging some of the items as set out in the Revised Itemised Breakdown of Estimated Costs (31 July 2006).
18. On the second day's hearing Mr Wilson confirmed that it was not intended to place landlord's costs of proceedings before the Tribunal on the service charge account and, on that specific assurance, no determination is required of the Tribunal under Section 20C of the Act.

19. The matters which were challenged by the Applicant and which required the determination by the Tribunal were as follows:-

- (a) Apportionment of costs;
- (b) The works, and specifically the temporary removal of TV and satellite dishes, asbestos removal to communal areas, concrete repairs, regrouting all loose/defective grouting to wall tiles, removal and replacement of defective ceramic wall tiles to communal area, cleaning masonry, windows, new roof covering, roof access doors, renewal of windows to common parts, renewal of glazing to communal door, communal decoration, rainwater goods, removal of conduit/trunking to communal walkways, removal of incinerator flue;
- (c) Management fees Home Ownership Services;
- (d) Management fees Technical Services;
- (e) Application for reimbursement of fees

20. The salient parts of the evidence and the Tribunal's determination are given under each head.

(a) Apportionment of costs

21. This was the most contentious issue between the parties. Mr Weerasenghe was adamant that he was being overcharged since the calculation was not in accordance with the Council's policy and procedures. Mrs Richardson confirmed that the calculation had been carried out in accordance with the lease terms, but accepted that the referencing to "the block" in the Section 20 Notice and also in the information pack, could cause confusion. She said that the information pack would be reviewed, but that the error had occurred since this block was a mixed residential and commercial block and normally blocks comprised residential units only. In view of the confusion caused, the Council would make a concession whereby the estimated costs would be reduced by one third to take account of the benefit of the works to the neighbourhood housing office and the health clinic. Mr Weerasenghe said he was not satisfied with the explanation offered. He said it was not fair.

22. In the helpful information pack issued to service charge payers by the Home Ownership Unit and titled "*Major Works Toolkit*" under the heading "*Repairs & Maintenance*", it is stated:-

*"The Estate column on the schedule shows the total cost of repairs to the estate. The Block column on the schedule shows the total cost of repairs to the block. The Contribution column shows the apportioned cost payable for this service. This is calculated as follows:*

$$\frac{\text{Rateable Value of Flat}}{\text{Rateable Value of Estate}} \times \text{Total cost of repairs to estate}$$

Plus

$$\frac{\text{Rateable Value of Flat}}{\text{Rateable Value of Block}} \times \text{Total cost of repairs to block}$$

*Equals the amount shown in the contribution column."*

23. However, in Part II of the Sixth Schedule to the lease under which the property is held which relates to service charges it is stated:-

**"The Service Charge attributable to the Flat in any financial year shall be the aggregate of:-**

- (a) in relation to costs and expenses incurred in relation to the Building such proportion of the relevant Service Charge as the rateable value of the Flat on the 1<sup>st</sup> April of that year bears to the aggregate rateable value on that date of all the flats then comprised in the Building Provided That if in any year the Flat shall not for any reason whatever have a rateable value this paragraph shall take effect as if the words "floor area" were substituted for the words "rateable value" in both places where they occur

and

- (b) in relation to costs and expenses incurred in relation to the Estate (as opposed to the Building) such proportion of the relevant Service Charge; as the rateable value of the Flat on the 1<sup>st</sup> April of that year bears to the aggregate rateable value on that date of all the dwelling-houses then comprised in the Estate Provided That if in any year the Flat shall not for any reason whatever have a rateable value this paragraph shall take effect as if the words "floor area" were substituted for the words "rateable value" in both places where they occur.

**The Council shall annually serve on the Lessee before the first date for payment thereof a written demand for the sum representing the Council's estimate of the Service Charge attributable to the Flat in that financial year ..."**

24. The Tribunal must consider the terms of the lease which is the contract between the parties. The Respondent has correctly calculated the apportionment due from the Applicant based on rateable values and, in addition, as stated in paragraph 21 above has made a further concession in respect of the ground floor premises.

**(b) The works**

25. The Applicant's main challenge under this head was that some of the works had not been carried out. The Respondent's reply was that if certain works had not been carried out, then they would not appear in the final account and the Applicant would not have to pay for them.

26. The works were competitively tendered and the Tribunal considers that the contract sum is reasonable. In addition, the Tribunal determines that all the works proposed are reasonable if carried out and also determines that the revised estimated costs are reasonable for those works if carried out.
27. The Tribunal notes the concession made by the Respondent in respect of the ground floor premises and is of the opinion that even without the concession, the estimated costs are reasonable, since they accord with the calculation as set out in the lease. The Tribunal does feel however that the Major Works Toolkit should, as Mrs Richardson suggested, be subject to a review, in order to prevent confusion in future.

**(c) Management fees Home Ownership and**

**(d) Management fees Technical Services**

28. The Respondent in its Reply of 26 June 2006 stated:-

*"The Management Fee relates to the Respondent's duties in managing the project. Costs are for staff, stationery, equipment and building rental to include the following:-*

- project management, monitoring & liaison*
- statutory and other consultation*
- having regard to and answering leaseholder's observations*
- invitation and information to companies nominated by leaseholders*
- answering general enquiries in writing, over the telephone and via personal interview, including arranging home visits as necessary*
- arranging and attending a number of public meetings concerning the contract*
- attending project and site meetings*
- carrying out site visits*
- maintaining the service charge accounts*
- raising major works invoices*
- collection of monies owed to the Council for capital works, including setting up payment agreements, standing orders, voluntary charge etc. Monitoring accounts and applying to leaseholder's mortgagee as necessary. Issuing reminders and statements and undertaking legal proceedings, as required*
- agreeing and auditing the contract final accounts*
- preparing the final costs and adjusting leaseholder's charges*

*This fee includes the involvement of both the Respondent's Home Ownership Service and Technical Service Department."*

29. The Tribunal intends to deal with the management fees for the Home Ownership and Technical Services together. The Tribunal was unconvinced by the evidence presented on behalf of the Applicant under these heads. Mrs Richardson accepted that there was some overlap in duties although she maintained that this was minimal. Bearing in mind the level of basic



management fee paid by the Applicant of 20%, it is felt that additional supervision fees at 6.45% plus management fees for Home Ownership Services at 8% plus management fees for Technical Services of 5% is on the high side. It is noted that in the "*Major Works Toolkit*" guidance package issued by Home Ownership Services, there appears to be no mention of additional management fees either for Home Ownership Services or Technical Services which may cause confusion amongst those who pay service charges to the Council.

30. The Tribunal determines that the appropriate global percentage for management fees in the case of major works in this particular case should be 15%, and determines therefore that this percentage is relevant and reasonably incurred and properly chargeable to the service charge account. Since there was no challenge to the supervision fee of 6.45% due to the contract administrator (which in any event the Tribunal considers is reasonable), the remaining 8.55% should be allocated in respect of the management fees of Home Ownership Services and Technical Services. The Tribunal does not intend to allocate specific proportions to each Service and this is left to the Respondent to allocate as considered appropriate.

**(e) Application for reimbursement of fees**

31. In accordance with paragraph 6 of Directions issued by the Leasehold Valuation Tribunal on 8 June 2006, the Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 and make an Order that the Respondent do reimburse to the Applicant the application and/or the hearing fees or any part thereof. The application fee in this matter was £200 and the hearing fee £150.
32. The Applicant submitted that there had been a considerable number of errors, and he had first been asked to pay approximately £20,000. It had not been a reasonable demand. Although the second demand was lower, this was still not reasonable because it did not accord with the Council's accepted policy and its brochure was misleading. Although Mr Weerasenghe accepted that the Respondent had been prepared to discuss matters with him, they had told him that there would be no further reduction, and therefore, in his opinion, any further discussions with the Respondent would be "*a waste of time.*" Mr Weerasenghe had lost two days wages and would also have to pay for the attendance of Mr Wimalasekera at the hearing.
33. Mr Wilson said that the issues had been explained to the Applicant both in writing and by telephone. He accepted that there was confusion in the policy documents, but the Council had gone "*above and beyond*" what was required. Errors had been corrected and concessions made. In Mr Wilson's view, there was a little that the Respondent could do further.
34. The Applicant was entitled to bring his action before the Tribunal, and the Respondent was entitled to defend such action. It is acknowledged that both sides have incurred costs which are irrecoverable. However, it is noted that the Respondent does not intend to place the landlord's costs of proceedings

on the service charge account and has also made significant concessions in respect of the ground floor premises. Accordingly, it is considered that to order the Respondent to reimburse to the Applicant the application and/or hearing fees or any part thereof would be punitive in the circumstances of this case.

35. The Tribunal does not intend to exercise its discretion in this case and declines to make an Order for the Respondent to reimburse to the Applicant the application and/or hearing fees or any part thereof.

**The determination of the Tribunal as to service charges is binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.**

CHAIRMAN ..... *Alley* .....

DATE ..... *18 September 2006* .....

JG