

CHI/21UD/LSC/2007/0066

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: 1-3 Warrior Square, St Leonards on Sea, East
Sussex, TN37 6BA

Applicant: Eagleye Limited (Drawflight Estates Limited)

Respondents: The Lessees

Application: 16 July 2007

Inspection: 24 October 2007

Hearing: 24 October 2007

Appearances:

Landlord

Mr Turner
Mr Butler
Mr Shields
Mr Baker

Eagleye Limited
Countrywide
Drawflight Limited
Architect

For the Applicant

Tenants

Mr S Wood
Mr Morgan

Counsel
Leaseholder (Flats 9, 10 & 11)

For the Respondent

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mr N Cleverton FRICS
Mr T Wakelin

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/21UD/LSC/2007/0066

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF 1-3 WARRIOR SQUARE, ST LEONARDS ON
SEA, EAST SUSSEX, TN37 6BA**

BETWEEN:

**EAGLEYE LIMITED
(DRAWFLIGHT ESTATES LIMITED**

Applicant

-and-

THE LESSEES

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This application is made by Drawflight Estates Ltd ("Drawflight"), managing agents, on behalf of the freeholder of the subject property, Eagleye Ltd ("Eagleye"). The application is made pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the lessees' liability to pay and/or the reasonableness of the estimated cost of external repairs and redecorations arising in the service charge year ending 23 June 2007.
2. The subject property was originally comprised of 8 flats. Each of the 8 lessees holds a share in the freehold company. Approximately 2 years ago, three further leases were granted to Ubridge Ltd of the ground floor and basement

of the property. Ubrudge Ltd then carried out a redevelopment of these areas to provide 3 further flats (Flats 9, 10 and 11). None of the lessees of these flats has a share in the freehold company.

3. It seems that for a number of years the subject property had suffered from neglect. Approximately 2 years ago, Eagleye was notified by Hastings Borough Council that it would be required to carry out external renovations to the external fabric of the property to bring it into line with their conservation quality standards. To this end, Drawflight was instructed to prepare a schedule of proposed works in order that the estimated cost of such works could be ascertained.
4. The original 'ball park' estimate dated 16 June 2006 was prepared by Mr Baker, an Architect and Partner in the firm of WAS, Chartered Architects, in the sum of £177,000 excluding VAT and fees. This estimate was prepared on the mistaken belief that the proposed works might be carried out with the assistance of a grant from the local authority. On 23 September 2006, Drawflight served a Notice of Intention on the leaseholders to carry out the proposed external repairs and redecorations to the building. In January 2007, a Schedule of Works was prepared by Maynard Mortimer & Gibbons, Quantity Surveyors. On the basis of this schedule, WAS subsequently carried out a tendering process for the proposed works. Three tenders were received. These were from Rok (£79,904), Ellis Building Contractors (£90,772.50) and Peter Cadney (£73,461). The latter was in fact the builder who had carried out the conversion works to the ground and basement floors on behalf of Ubridge Ltd. A tender analysis was carried out by Maynard Mortimer & Gibbons and on 21 June 2007 they recommended that the tender from Ellis Building Contractors be accepted by Drawflight on behalf of Eagleye.
5. On 14 September 2007, a Statement of Estimates was served on the leaseholders setting out details of the tenders received. The tender from Ellis Building contractors appears to have been accepted. The total estimated cost of the proposed works including VAT and fees was £128,627.67. An undated schedule was prepared containing a breakdown of the total cost and this also

included the service charge contribution payable by each of the 11 leaseholders¹. It seems that when Mr Cadney protested about his tender not being accepted, the Applicant made this application.

Inspection

6. The Tribunal externally inspected the subject property on 24 October 2007. The property comprised a substantial corner property on the on the sea front at Hastings at the junction of Warrior Square. The building constructed on Ground and four upper floors together with a basement, has fully rendered elevations and was constructed possibly around 1840-1850.

Hearing

7. The hearing in this matter also took place on 24 October 2007. The Applicant was represented in the main by Mr Shields from Drawflight. Of the Respondents, only Mr Morgan on behalf of Ubridge Ltd attended and it was represented by Mr Wood of Counsel.
8. Mr Wood indicated that the only challenge being made was in relation to the estimated repair cost to the windows in the sum of £43,696². It was submitted that the cost of repairing and maintaining the windows of each flat under the terms of the various leases was the individual responsibility of each lessee and not the landlord³. The latter was only obliged to redecorate the external parts of the windows. Moreover, none of the proposed window repairs applied to Flats 9, 10 and 11, of which Ubridge Ltd was the lessee. This was accepted on behalf of Eagleye at the hearing and in correspondence with the lessees⁴. It was also accepted on behalf of Eagleye that the estimated cost of Ellis Building Contractors included the sum of £43,696 for window repairs. Mr Shields said that this sum would have to be deducted from the overall cost and the service charge contributions payable by each lessee revised accordingly.

¹ see p.245 of the bundle

² see p.233 of the bundle

³ see p.24, para. (a) of the First Schedule

⁴ see p.235, para. 7

9. Mr Wood confirmed that no challenge was being made in relation to the validity of the s.20 consultation process undertaken by Drawflight on behalf of Eagleye, the necessity of the proposed works and the contractual liability and rate of the service charge contribution payable by Ubridge Ltd. Mr Wood also confirmed that, save for the cost of repairs to the windows, the remaining costs were conceded as being reasonable. Indeed, no other challenges had been made by any of the other lessees.

10. The agreed sum representing the estimated cost to carry out repairs to the windows in the building is £43,696. It was conceded on behalf of Eagleye that this sum should be deducted from the tender price of £90,772.50 submitted by Ellis Building Contractors because under the terms of the leases the landlord was not obliged to carry out repairs to the windows. None of the remaining cost was being challenged by any of the lessees. Accordingly, the Tribunal determined that the total estimated cost of the proposed works, less the cost of the windows, was £68,718.60 inclusive of VAT and fees. The Tribunal's calculation is annexed to this Decision.

Dated the 21 day of November 2007

CHAIRMAN.....*J. Mohabir*.....

Mr I Mohabir LLB (Hons) 

CALCULATION

Ellis Builders tender	90,772.50
Less cost of windows	43,696.40
Add Surveyors Fees	4,702.61
Plus CDM charges @ 1%	470.26
Add Drawflight Estates service charges	3,500.00
Add VAT @ 17.5%	9,747.32
Add contingency sum @ 5%	3,273.31
Total of Estimated Project Cost	68,718.60

9. Mr Wood confirmed that no challenge was being made in relation to the validity of the s.20 consultation process undertaken by Drawflight on behalf of Eagleye, the necessity of the proposed works and the contractual liability and rate of the service charge contribution payable by Ubridge Ltd. Mr Wood also confirmed that, save for the cost of repairs to the windows, the remaining costs were conceded as being reasonable. Indeed, no other challenges had been made by any of the other lessees.

10. The agreed sum representing the estimated cost to carry out repairs to the windows in the building is £43,696. It was conceded on behalf of Eagleye that this sum should be deducted from the tender price of £90,772.50 submitted by Ellis Building Contractors because under the terms of the leases the landlord was not obliged to carry out repairs to the windows. None of the remaining cost was being challenged by any of the lessees. Accordingly, the Tribunal determined that the total estimated cost of the proposed works, less the cost of the windows, was £68,787.08 inclusive of VAT and fees. The Tribunal's calculation is annexed to this Decision.

Dated the 21 day of November 2007

CHAIRMAN.....



Mr I Mohabir LLB (Hons)

CALCULATION

Ellis Builders tender	90,772.50
Less cost of windows	43,696.40
Add Surveyors Fees	4,707.61
Plus CDM charges @ 1%	470.76
Add Drawflight Estates service charges	3,500.00
Add VAT @ 17.5%	9,757.03
Add contingency sum @ 5%	3,275.58
Total of Estimated Project Cost	68,787.08