



LEASEHOLD VALUATION TRIBUNAL

REF: LON/00AW/LSC/2007/0126

69 OXFORD GARDENS, LONDON W10

CONSENSUS RTM LTD

Applicant

MRS LILIANE CARTER

Respondent

Dates of hearing: 2 & 3 July 2007

Date of decision: 19 July 2007

Tribunal: Mr M. Martynski - Solicitor
Mr F. Coffey FRICS
Mr A. Ring

Present: Mr Lawrence (Leaseholder – flat 5)
Mr Bray (Managing agent)
Mrs Carter (Respondent – flat 3)
Miss Carter (Respondent's daughter)

Summary of decision

1. The Tribunal finds that service charge costs 2004 to 2007 are payable with the exception of the following:-
 - Interest (gross sum £3082.00)
 - Contribution to window replacement (£1,500.00)
 - Solicitor's fees (£1292.50)
 - Fees of Bray Building Services (£881.25)
2. No order is made under section 20C Landlord and Tenant Act 1985.

Background

3. 69 Oxford Gardens (the Building) is a large detached late Victorian property which has been converted into six flats. The building has a front garden with separate access to the garden flat being via a side entrance. The garden flat has exclusive use of the rear garden. The other flats are reached via a main front door at raised ground level and a communal tiled hallway and stairs.

4. The Respondent is the long leaseholder of flat 3 situated on the 1st floor of the building.

5. The freehold of the Building was formerly owned by the Respondent and a former long lessee of the basement flat. Whilst at the time of the final hearing before the Tribunal it was clear that the Respondent was still the joint owner of the freehold, the identity of the other joint owner was not clear, but it seemed that the other joint owner may have been the current long leaseholder of the basement flat. In any event, at the time of the final hearing, the freehold was in the process of being purchased by a company set up by some of the long leaseholders in the property (not including the Respondent).

6. The Applicant Right to Manage (RTM) company had been set up and had acquired the right to manage in or about March 2004. The directors of that company are the long leaseholders of flats 5, 4, 1 and the basement flat. The members of the RTM company are those directors plus the Respondent (in her capacity as long leaseholder).

7. In January 2005, the Applicant appointed Bray Building Surveying (BBS) as managing agents.

8. From in or about September/October 2005 to January 2006, major works of repair, refurbishment and decoration were carried out to the interior and exterior of the Building.

9. The Tribunal inspected the Building in the presence of the persons who attended the final hearing (and whilst in the garden flat accessing the rear of the property, in the presence of Ms Morgan the long leaseholder of the garden flat) on the morning of the first day of the final hearing.

10. The Tribunal found the property to be in good internal and external condition. In general, the work carried out to the building appeared to have been done to an acceptable standard.

The issues and the Tribunal's detailed decisions

11. The Respondent had challenged a number of service charge items for the years 2004 to 2007 and these proceedings were started by the Applicant seeking a declaration from the Tribunal as the payability of those items in dispute. Those items and the Tribunal's decisions as to payability are set out below. Before setting out the issues it is important to note the following:

(a) The service charge figures referred to in this decision are the figures for the Building, not the proportionate amount (of 22%) which is the proportion of the service charge payable by the Respondent under the terms of her lease.

(b) The Tribunal's decisions relate only to the Respondent's liability for service charges, not to any other leaseholder's liability. These proceedings for declarations as to payability are brought by the RTM company against only the Respondent, not against any other persons.

Interest

12. The following charges were made for interest:

£808.11 – 2005/6
£2273.89 – 2006/7

13. It was common ground between the parties that the various leases for the flats in the Building did not allow for there to be a service charge payable in advance. Therefore if work had to be done, either; (i) all leaseholders voluntarily agreed to pay in advance or when the bill for the work had to be paid, or; (ii) money would have to be borrowed pending the work being done, the end of year accounts being drawn up and the service charge for the year being demanded and collected from the various leaseholders.

14. Major works of repair and decoration which had been outstanding for some time needed to be carried out to the building. The Applicant's directors decided that money had to be obtained outside of the service charge provisions in the lease to fund, at least in part, those works and that the only way to raise this money was by way of a loan. The RTM company had no assets and accordingly could not obtain a loan itself. Loans to the company were therefore made by two of the Applicant's directors, Mr Lawrence of flat 5 and Ms Morgan of the garden flat. Loan agreements were drawn up between the Applicant and Mr Lawrence and Ms Morgan. These agreements were drawn up after loans had already been made and the copies of the loan agreements shown to the Tribunal were neither signed nor dated. Based on somewhat casual enquiries made Mr Lawrence of his own bank and of Ms Morgan's husband who worked in a bank, it was decided that the interest rate on the loans made would be five per cent above base rate. The interest charged on the service charge account and set out above was the interest paid to Mr Lawrence and Ms Morgan.

15. These interest charges were objected to by the Respondent on the ground that there was no provision in the lease allowing for a service charge to be made in respect of interest. The relevant part of the Respondent's lease dealing with the service charge is as follows;

5. The tenant hereby further covenants with the Landlords as follows:

(1) That the tenant will pay to the Landlords on demand by way of maintenance charge annually after the expiration of every period of twelve months ending on the twenty-fifth day of March (hereinafter called the "relevant year") one quarter of the said Annual Maintenance Cost hereinafter defined

(2) The annual Maintenance Cost hereinbefore referred to shall be the total of all sums actually paid and expended by or on account of the Landlords during the relevant year in connection with the management and/or maintenance of the Building and in particular but without limiting the generality of the foregoing shall include the following:-

- (a) the costs of and incidental to the performance and observance of each and every covenant in Clause 4 hereof contained other than the covenant in sub-clause (7) thereof and
- (b) the costs of and incidental to compliance with every notice regulation or order of any competent local or other authority.

It should be noted that by a variation of the Respondent's lease, her share of the service charge is 22%, not the one-quarter provided for in the original lease. Clause 4 of the lease referred to in the extract above contains the landlord's obligations which are principally in relation to maintenance, decoration, repair and insurance.

16. The Applicant, due to the terms of the lease and the need for works to be carried out, found itself in a difficult position and whilst some criticism could be made of the way in which the loan interest figure was arrived at, and in respect of the lack of paperwork produced to evidence the loan and of possibly the lack of consultation regarding the loans, arranging for loans in this way appears to have been a reasonable course of action for the Applicant to have taken.

17. However, it is settled law¹ that if a landlord wishes to recover an expense such as interest which is not a direct expenditure cost incurred in complying with its obligations under the lease, then that expense has to be clearly spelled out in the lease. The lease in this case contains no such clear wording of a kind that would allow the recovery of interest. Accordingly, the Respondent is not liable to pay any sums in respect of interest.

Management charges

18. The following charges were made for managing agents:

£1762.50 (set up fee) –	2004/5
£440.63 (one quarter) –	2004/5
£1762.50 -	2005/6
£2115.00 -	2006/7

19. When the Applicant company was first set up, those setting it up declared that they did not intend to employ managing agents. That position was changed some months later when in January 2005, BBS were appointed as managing agents.

20. The objections to the fees paid to the managing agents from the Respondent were that;

- (a) There was no provision in the lease for recovery from the lessees of money spent on managing agent's fees
- (b) The agreement with BBS was a qualifying long term agreement and accordingly the lessees of the Building should formally have been, but were not, consulted under section 20 Landlord & Tenant Act 1985 prior to the appointment. Further or in the alternative, there was no vote taken of the members of the Applicant approving the appointment of the managing agents.
- (c) The lessees should be charged at the rate of £250.00 per flat for the agent's fees, and not as per the percentage of costs payable under their leases.

¹ See for example; *Frobisher (Second Investments) v Kiloran Trust* [1980] 1 W.L.R. 425 and *Boldmaker Ltd v Cohen and another* [1986] 1 EGLR 47

(d) The increase in the managing agents fees for the year 2006/7 was unreasonable.

21. As to objection (a) above, the Tribunal finds that, unlike interest charges, the lease does allow the Applicant to seek the costs of managing agents from the Respondent. The lease is, on this cost, quite clear. The words "The annual Maintenance Cost shall be the total of all sums actually paid and expended by the Landlords during the relevant year in connection with the management....." in clause 5(2) of the lease plainly contemplate the use of managing agents.

22. It should be noted that when managing the property herself, the Respondent made a management charge (£150.00 per annum per flat) which appeared in service charge accounts prepared by her. The Respondent however stated that rather than being a service charge cost, this management fee was a voluntary contribution made to her by other long leaseholders in respect of the time taken to manage the Building.

23. As to objection (b), the contract made with BBS clearly stated that it was terminable upon three months notice. A qualifying long term agreement is simply defined as an agreement entered into for a period of more than 12 months². Accordingly the agreement with BBS is not a qualifying long term agreement and therefore no formal statutory consultation was needed prior to the contract being entered into.

24. As to consultation, it was the Applicant's case, as put forward by Mr Lawrence, a director of the Applicant company and long leaseholder of flat 5, that at a meeting at the end of 2005 which took place in the Respondent's solicitor's office, the Respondent was told that managing agents would be appointed if negotiations with her over various matters did not produce results. There was then a board meeting of the Applicant on 19 January 2005 when it was resolved to appoint BBS as managing agents.

25. It was reasonably clear that prior to 19 January 2005, BBS appeared to be the favoured agents and the terms on which they would be appointed had been largely worked out. It was admitted that the Respondent had not been consulted on the terms of the appointment or indeed on the identity of the agent to be appointed. The Tribunal was told by Mr Lawrence that the other non-director leaseholder may have been informed informally of some of the details of proposed appointment. The Respondent had made it clear for many years that she opposed the appointment of a managing agent.

26. There was clearly some lack of consultation regarding the appointment of BBS; however this did not mean that the appointment of a managing agent was unreasonable. Given that the lessees were at loggerheads, it made sense for there to be appointed a third party to manage the property.

27. As to point (c), the Tribunal finds that the proper way to apportion the managing agent's fees is to treat the gross amount of the fees as an expense of the

² Commonhold and Leasehold Reform Act 2002 section 20ZA(2)

management of the building and to apportion that expense as per the service charge provisions of the lease – in the Respondent’s case, she pays 22% of the charge. The charge of £250/£300 per flat is the way in which BBS calculates its charges which is not determinative of the way in which those charges should be apportioned to the lessees.

28. As to point (d), there was an increase in management charges from £250.00 per flat to £300.00 per flat. It was the size (20 per cent) of the increase that was objected to by the Respondent. The Tribunal’s view was that for a building of this nature and size, the sum of £300 per flat per annum as a management charge was within a range of reasonable charges. The increase from £250 to £300 may have been a large increase. It did not however, in all the circumstances, render the fee unreasonable.

Major Works

29. The following charges were made in respect of major works:

£47,651.38 –	2005/6
£2842.70 (professional fees) –	2005/6
£2911.31 (professional fees) -	2005/6
£2507.97 (retention) -	2006/7

30. The objections to the various items that were included under this general heading were;

- (a) That there was a failure to properly follow the section 20 Landlord and Tenant Act 1985 consultation procedure in respect of the works and professional fees
- (b) Items of work were not carried out to the standard specified / items of work were carried out that were not necessary
- (c) Work directly affecting the Respondent’s flat was not carried out
- (d) Snagging items were not completed
- (e) The work done by Mr Bray from BBS did not justify his fee and there was no section 20 Landlord and Tenant Act 1985 consultation process in respect of his fees

31. It is clear that the Building had fallen into a state of disrepair. This much is evident by the scale and cost of the works of repair, maintenance and decoration that were carried out internally and externally in 2005/6.

32. The first written notification of intended works was issued by letter dated 15 September 2004 from the Applicant company to the lessees of the Building. This notice stated the Applicant’s intention to carry out;

“internal decorations and repairs to the common parts of the house as detailed in the attached brief”

That letter complied with the relevant statutory regulations³ and invited comments and the names of nominated contractors from the lessees.

³ The Service Charges (Consultation Requirements) (England) Regulations 2003

33. No further action was taken on that letter by the Applicant and a further letter dated 17 May 2005 was sent to the lessees, this time by the managing agent, BBS, stating the Applicant's intention to carry out;

"The external repair and refurbishment of the building"

The Tribunal finds that this letter also complied with the relevant statutory regulations. The letter invited the lessees to nominate contractors by 17 June 2005.

34. By letter dated 11 June 2005, the Respondent replied to the letter of 17 May complaining of the brevity of the description of the proposed works. Having registered her complaint, the Respondent in that letter went on to nominate several different contractors for various different aspects of the proposed work.

35. A letter was then sent by BBS to the Respondent dated 15 June 2005. That letter stated;

"Quotations for these works will be invited of general building contractors, having access to the various trades on a domestic sub-contract basis. Please clarify whether any of the contractors you have nominated are equipped to offer this service...."

The Respondent did not respond to this letter. The proposed work set out in the consultation letters dated 15 September 2004 and 17 May 2005 was tendered. The results of that tender process were set out in a letter to the lessees dated 17 August 2005 and observations were invited. The Respondent made observations by letter dated 16 September 2005. The observations in the that letter included a clarification as to the contractors nominated by her in her letter dated 11 June. A letter in response was sent by BBS dated 19 September 2005.

36. The major works were started in or about September of 2005 and were completed in or about January of 2006.

37. The Respondent's contention that the statutory consultation procedure was not carried out correctly was based on the allegations that, first, the contractors nominated by her were not included in the tendering process and second, that her comments in relation to the consultation letters were not considered. The Tribunal rejects both contentions. The Respondent was asked for clarification as to her nominated contractors but she failed to make any response (within the time limit or any other reasonable time frame) to that request. There is evidence within the correspondence to show that the Applicant did consider the Respondent's observations, albeit possibly not within the time and with the attention required by the Respondent.

38. As to the Respondent's second point of objection in relation to the major works, she had a list of items arising from the major works that she was not satisfied with. That list is as follows;

(i) Main entrance fanlight – £260.00 was charged for this, only a very small piece of glass was replaced, the specification was for a house number to be painted on the glass but adhesive numbers were put on replacing the adhesive numbers that had previously been there – Mr Bray of BBS maintained that the numbers on the glass had been painted

(ii) The paint to the main front door to the Building had not been burnt off prior to re-painting as per the specification – this was disputed by Mr Bray who was adamant that he had seen the door being prepared properly prior to painting – the

Tribunal found from its inspection that the door appeared to be reasonably well painted

(iii) Internal scaffolding had been priced for but not put up – Mr Bray confirmed that as no internal scaffolding had been put up, no charge had been made for it

(iv) The 30 rolls of wallpaper that the Respondent had already purchased were not used and more wallpaper was unnecessarily purchased, plain paper was used rather than anaglyptar paper

(v) The wired glass to the sash window on the first landing on the communal stairs had been unnecessarily changed for plain glass – Mr Bray said that this was done as the existing glass was too heavy for the sashes and that the replacement glass was as secure as the old glass

(vi) All internal light switches were changed unnecessarily – Mr Bray said that this was done as part of the upgrade of the electrical system which had been part of the specification following the inspection of the electrical system

(vii) Communal light fittings were cheap items not suitable for the character of the house

(viii) The front small balconies to the Respondent's flat were left with green smudges on them after the scaffolding had been taken down and the decorative finish to them had not been made good – Mr Bray's comment on this was that this was an item that could be investigated and dealt with

(ix) The doors to the cupboards in the internal communal hallway and stairs did not fit properly – Mr Bray said that he would deal with this issue

(x) The electrical cupboard on the second floor landing should have been decorated but was not

(xi) The doors to the first floor pipe casing did not have a magnetic closer or handles – Mr Bray denied that this was in the specification

(xii) The front gate closing spring had not been replaced – Mr Bray contended that the spring was missing prior to the works

(xiii) The window box outside the Respondent's flat had not been decorated properly – it was established that this was the Respondent's own window box in any event

(xiv) The hallway tiling had not been polished – Mr Bray maintained that it had effectively been polished by way of the cleaning that had been done to it – the floor appeared to the Tribunal to be in a reasonable decorative condition

(xv) The light fitting in the hallway was not good enough and should have been bigger

(xvi) The ground floor meter cupboard had not been painted internally

(xvii) No sash lifts had been put on the interior of the sash windows on the stairways – Mr Bray said that this was not part of the specification

(xviii) Of the two sash windows on the communal stairs, neither sash was satisfactory, the sash at the top of the stairs was misaligned and the sash lower down the stairs had a large gap between the top of the top sash and the frame – Mr Bray said that the frames to both windows were distorted to some extent and that it is not cost effective to carry out further work as that would involve taking out the sashes and trying to make new sashes to fit distorted frames

(xix) Damage was done to the tiling to the flat roof outside the Respondent's flat by the scaffolding erected for the works – the tiles had been put on the roof by the Respondent as decoration

(xx) Down pipes at the rear of the Building needed to be rationalised – Mr Bray said that this matter would be looked at

39. This was a works contract of around £50,000 in value. The work appeared to have been done reasonably well from the Tribunal's inspection of the Building. The Respondent's complaints were in the context of the size of the overall work, very minor. The Tribunal was satisfied with Mr Bray's promise to look at some of the matters raised. In the circumstances the Tribunal concludes that the cost of the major work was reasonably incurred and so is payable by the Respondent.

40. As to the Respondent's complaint that work directly affecting the Respondent's flat was not carried out, this is not an issue for the Tribunal. No charge was made for such work. As to the damaged tiles, this is an issue for the Respondent to take up outside these proceedings.

41. As to the snagging items, these have been discussed in detail above. It was the Respondent's case that the retention of the contract payment of £2507.97 should not have been released given that there were, according to the Respondent, various items outstanding. The Tribunal disagrees, as stated above, the matters raised by the Respondent were minor and in any event, the retention is not in respect of "snagging" items. It is held pending completion of 'making good defects', at the end of, in this case, a 12 month defect liability period and was correctly released.

42. As to the consultancy fees, Mr Bray of BBS was appointed to deal with the major works over and above his capacity as managing agent. His fees were based on a figure of 11% of the total contract price. Mr Bray was responsible for the section 20 statutory consultation process, drawing up the specification, tendering and analysing the tenders and supervising the work.

43. The Respondent was of the view that in respect of Mr Bray's fees, no section 20 consultation procedure had been followed. He had done very little by way of supervision of the works, the Respondent was in her flat every day and never saw Mr Bray whilst works were going on. There were a large amount of provisional sums in the specification which amounted to a lot of guesswork.

44. As to the section 20 consultation point, the Tribunal has found that this, in respect of the works, had been complied with properly. It was made clear in the correspondence that cost of the work was exclusive of professional fees which did not require their own consultation procedure.

45. Mr Bray spent some time describing the work that he did in respect of the works. He maintained that he had made something in the order of 30 visits to the Building during the course of the works, he referenced this figure to his expenses claim in respect of travel costs for the job. He described how he had prepared the general specification at the outset and how the works had then been refined once the scaffolding had been put up and he had a chance to inspect at close quarters. He then gave examples of the issues that he had dealt with as the works progressed.

46. The Tribunal is satisfied that Mr Bray carried out the work as he described it, and further, that the method he adopted in identifying works required once the

scaffold had been erected, was correct. As to the level of his fees at 11% of the total cost of the works, the Tribunal finds that this is within the range of reasonable fees for this type of undertaking.

Boundary wall

47. The following charges were made in respect of the boundary wall:

£1938.75 –	2005/6
£881.25 (professional fees) –	2005/6
£881.25 (professional fees) –	2005/6
£881.25 (professional fees) –	2005/6

48. The boundary wall in question was a brick wall at the end of the rear garden and was a party fence wall shared with 76 Cambridge Gardens. The wall was damaged during a gale in 1990. An insurance claim was made and the insurance proceeds were paid to the then owner of the garden flat on the understanding that the owner of that flat would pay toward the rebuilding of the wall. This never happened. The Respondent maintained that Ms Morgan, the current owner of the garden flat, had stated that she would honour her predecessor in title's promise to pay for half the cost of re-building the wall, the other half to be paid by 76 Cambridge Gardens. Furthermore, it was the Respondent's case that the professional fees payable for the wall were excessive.

49. The Tribunal finds that the issue of the insurance money as set out above is irrelevant. The whereabouts of the then owner of the garden flat are not known, it is not realistic to expect the Applicant to try and recover the insurance money from that person. As to Ms Morgan's alleged promise, this was not binding on anyone. Ms Morgan has no responsibility for funding the cost of the work. The rear wall is owned by the freeholder, not the owner of the garden flat.

50. As to the costs, it transpired during the hearing that the professional fees payable for the issue were wrongly invoiced and should not be, as demanded, the sum of £2,643.75 (3 x £881.25) but should in fact be £1,762.50. The total costs of the party wall were therefore £4,582.50 (building work and professional fees).

51. Mr Bray described the work that he had carried out in respect of his fee. He had to inspect the wall and draw up a party wall notice to be served on the various leasehold and freehold interests in 76 Cambridge Gardens. He had to negotiate with the surveyor for the other property. He drew up a specification and went through a section 20 statutory consultation process. He arranged for the work to be tendered and supervised the works when they were carried out. As to the work itself, one of the reasons for the cost of the work was that access to the wall was through 76 Cambridge Gardens (there being no side access) and that access, for men, machinery and materials was necessarily by hand. The wall was, at lower level, a retaining wall. The wall had to be rebuilt at lower level and toothed into the walls at either side. The fence posts for the fence on top of the wall had to go through the wall. As to the Respondent's concern that only a fence was erected on the re-built wall rather than a replacement wall, Mr Bray explained that the reason for this was cost, which would have been very much greater had the wall been entirely re-built.

52. The Tribunal considers that the costs in this item are reasonable and payable, albeit at the top of the scale of reasonable charges. It is appreciated that there were a number of elements to the work that had to be carried out by Mr Bray and that there were access difficulties with regard to the work, which just about, justified the expense.

Drain clearance

53. The following charge was made in respect of drain clearance:
£216.20 – 2004/5

54. It was the Respondent's case that the garden had been landscaped by Ms Morgan in or about 2003. As part of that landscaping, concrete channels were built, this was evident from photographs shown to the Tribunal and its own inspection. Some of this concrete made its way into the drains. The Respondent pointed to an report of works carried out from Unbloc Drainage Engineers dated 11 September 2003 the relevant part of which stated;

"...we inspected [the gully drain] further and found it to be full of cement..."

The problem with the drains leading to the expenditure in 04/05 was the same problem. Therefore, as Ms Morgan had caused the problem with the drain, she should pay for it, not the other leaseholders.

55. The invoice relied on by the Applicant is undated but is marked as being paid on 6 January 2005. The invoice contained a description of the work done the relevant part of which read;

"used a scoop to remove about a bag of rubble and silt"

56. There was no clear evidence that the problem with the drain for the invoice in question was caused by concrete. The Tribunal considers that the silt described could have been washed into the drain by rainfall or other action. The amount of the invoice is accordingly reasonable and payable.

Front steps

57. The following charge was made in respect of the front steps:
£280.00 – 2004/5

58. The Respondent's objection to this item was that the steps were repaired by pouring tar into the cracks (these cracks had caused leaking to the utility room of the garden flat below). The steps were left looking unsightly. A stone filler would have been better.

59. It was accepted by all parties that the repair had worked, at least until recently when a further repair was required. According to Mr Bray, the further repair was required, not because the old repair had failed, but because there had been movement in the steps. The repairs that had been done were done whilst Mr Bray was considering whether or not there was ongoing movement in the steps and whether there should be an insurance claim.

60. The Tribunal takes the view that taking all the circumstances of the steps into account, given the cost of the repair in question and given that in terms of aesthetics

the area of filled cracks was very small, that cost was reasonably incurred and is payable.

Flat roof

61. The following charge was made in respect of the flat roof:
£650.00 – 2004/5

62. The contractors who had carried out the disputed repair to the front steps were called in to look at the flat roof outside the kitchen of the Respondent's flat to give a quote for its repair. The asphalt covering of the flat roof required some repair as there had been leaking through to the premises below it. The written estimate for this work is dated 29 June 2004 and is for £320.00 in order to take up the tiles on the roof, rake out and apply hot bitumen and reset the tiles. The Respondent's complaints were that first, the actual cost of the work was £650.00. Second, the work was done badly inasmuch as the tiles that had been taken up were not reset properly after the work.

63. The invoice in question contains a brief description of the work done and that description does not include the replacement of the tiles once the work was done. However, it is clear from what the Respondent said that the contractors did attempt to replace tiles as per their estimate. It was agreed that the work done had achieved its objective, that is to stop the leaking. It is not at all clear why the invoice was so much more expensive than the estimate.

64. The Tribunal concludes that, as to the cost of the work, given that it was successful in remedying the problem of leaking, even though the cost exceeded the estimate, given the level of the cost, it was reasonably incurred. The issue of broken tiles is one to be taken up with the Applicant by the Respondent outside of these proceedings.

Contribution to replacement of windows in garden flat - £1,500 – 2005/6

65. At one time, possibly in or about the mid 1990's, the back wall to the garden flat was knocked down and another wall was built further out into the garden to enlarge the kitchen area and make an enclosed space where there was once an open covered space. Two French doors were put into the back wall with access directly on to the garden. As far as anyone knew, the lease for the garden flat had not been renewed or amended to take account of the extension. The back wall to the kitchen of the garden flat and the windows/doors in it were therefore entirely the creation of the lessee of the garden flat.

66. Ms Morgan, the current lessee of the garden flat, replaced the wooden framed French doors in this new rear wall with modern sliding doors. One of the reasons that she did this was because there was some disrepair to the French doors. Ms Morgan discussed with other residents at a meeting in August 2004 her plans to replace the French doors. It was thought that the cost of the replacement was in or the order of £5-6,000. According to Mr Lawrence, a specialist company of some kind had come in, examined the French doors and given a quote for their repair which was in the order of £750.00 per set of doors (total cost of around £1,500). It was decided that Ms Morgan would be paid a contribution of £1,500 towards the replacement of the doors given that this was the amount that it would have cost to repair them. Mr Lawrence,

quite properly, admitted that the details of all of this were quite vague and readily admitted that there was no paperwork in respect of the inspection and estimate.

67. The Tribunal finds that this sum is not payable by the Respondent. First there is no proper evidence of the extent of disrepair to the doors and the cost of repairs. The French doors were not very old. Second, it is questionable in any event whether the other lessees are liable for the costs of work to this area of the garden flat given that it is not part of the original demise.

Solicitor's fees

68. The following charge was made in respect of solicitor's fees:
£1292.50 – 2005/6

69. These fees were paid to solicitors in respect of advice in a previous dispute between the parties before the Leasehold Valuation Tribunal. That dispute concerned the amount of legal costs payable to the Respondent as a result of the Applicant's acquisition of the Right to Manage. The bill for this advice gave no meaningful description of the work done, the description being;

“General advice since September 2004 to date in connection with difficulties with the Landlord Mrs Carter and subsequent advice regarding the application to the LVT”

There is no indication of what time was spent, what type of work was done or by who the work was done.

70. The Tribunal finds that these fees are not payable by the Respondent. First, the fees are not recoverable under the terms of the lease because the fees were not incurred directly in managing or maintaining or repairing the building. In such circumstances, in order for such costs to be recoverable, there has to be a very clear provision in the lease. There is no such provision. Second, the Tribunal does not consider that the Applicant's own costs of a dispute with the Respondent are properly chargeable to the service charge. Third, given the terms of the invoice and given that Mr Lawrence was unable to shed any further light on the work done, even if the cost were possibly recoverable as a service charge, it would have been impossible for the Tribunal to assess the reasonableness of the costs.

71. It should be noted that this decision is based on these particular legal costs. The Tribunal has not made a ruling on the recoverability of legal costs in general under the lease.

Repair to window

72. The following charge was made in respect of the window repair:
£164.50 – 2006/7

73. The objection to this item was based on a contention that there was an arithmetical error in the invoice and so an overcharge of £23.50. After looking at the invoice, it is clear to the Tribunal that the total of the invoice, £188.00, is correct, there is a clear mistake in the net charge which should be £160.00, not £140 as described. Accordingly the full sum is payable.

CCTV survey of drains

74. The following charge was made in respect of the CCTV inspection:
£381.88 - 2006/7

75. Given the age of the drains and in order to try to resolve ongoing drain problems, Mr Bray arranged for a CCTV inspection of the drains. The cost of this at £381.88 was a standard call out charge. The CCTV report was not shown to the Respondent nor was it available for the Tribunal. Mr Bray told the Tribunal that the report stated that the drains were in reasonable order apart from some build up of scale which reduced the drains' bore. In order to carry out the survey, much debris had to be removed from the interceptor trap. The drains however could not be completely surveyed and the drain that may have been causing previous problems could not be inspected. The reason for this was that Ms Morgan in the garden flat refused permission for the small amount of destructive work that would have been required to lift the drain cover in her kitchen. Ms Morgan was not warned of the need to lift the drain cover in her property prior to the workman carrying out the survey.

76. The Tribunal finds that given that the cost of this work was a standard call out charge and given that the survey was of some use, the cost incurred was reasonable. However, if there are further problems with the drains requiring a further CCTV inspection, the costs of such an inspection may require close scrutiny.

Costs – Section 20C Landlord and Tenant Act 1985

77. The Respondent made an application pursuant to section 20C Landlord and Tenant Act 1985 which provides as follows;

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2).....

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

78. The Tribunal declines to make order limiting costs under section 20C. The Respondent effectively invited this application by the Applicant. Whilst the Respondent has been successful in respect of some items, the Applicant has been successful on the majority of them in terms of the number and value of items. The preparation required and the hearing time would not have been significantly less had the Applicant not contested the items on which it was not successful.



Mark Martynski - Chairman
19 July 2007