

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AU/LSC/2005/0200

**AND IN THE MATTER OF 13, 4 & 14 CAROLINE MARTYN
HOUSE & 9 ARTHUR HENDERSON HOUSE, HORNSEY LANE
ESTATE, LONDON N19 3BL**

BETWEEN

MRS ROSEMARY ANN TANKARD [1]

MISS LINDA EVANS [2]

MR EDWARD TORTO [3]

MR WAHAB MEETOOA [4]

Applicants

-and-

**MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF ISLINGTON**

Respondent

THE TRIBUNAL'S DECISION

Hearing: 30 November 2006

**Tribunal: Mrs S O'Sullivan Solicitor
Mr T Sennett MA FCIEH
Ms S Gosling**

Background

1. The Application to the Tribunal under s.27A of the Landlord and Tenant Act 1985 (as amended) (the "Act"), dated 15 July 2005, sought a determination of the Applicants' liability to pay service charge for the years 2003/2004 and 2005/2006 and major works which were carried out in 2004/05. All the issues raised in the application were, with two exceptions, determined by a decision of the Leasehold Valuation Tribunal dated 22 December 2005. Determination of the remaining issues was adjourned by that Tribunal to be restored on written notice which was subsequently given.
2. The First, Second and Third Applicants are the lessees of flats within Caroline Martyn House ("CMH") and the Fourth Applicant is a lessee of a flat within Arthur Henderson House ("AHH"). The Tribunal heard that the Applicants held these properties subject to leases in identical form as to terms and the Tribunal was provided with a specimen lease made between the First Applicant (1) and the Respondent (2) dated 8 June 1998 (the "Lease"). By clause 1(2)(2) of the Lease the Applicants are required to pay service charges. Clause 5(3) of the Lease sets out what the service charges are to consist of including a portion of the expenses and outgoings incurred or to be incurred by the Applicant in respect of the items set out in the Third Schedule of the Lease. It is not disputed by any of the the Applicants that the service charges claimed by the Applicant fall properly within the Third Schedule of the Lease.
3. A mediation took place on 25 September 2006 at which the remaining issues which were not decided on 22 December 2005 were considered being (i) the sums which the leaseholders are liable to pay for major works carried out in 2004/05 and completed in around April 2005 (the "Major Works"); and (ii) the proper basis of apportionment of those costs. At this mediation the cost of the preliminaries and scaffolding forming part of the major works was agreed in respect of CMH at £16,094.04. No agreement was reached in respect of AHH. The remaining items contained within the Major Works and the proper basis of apportionment of those costs remain the issues to be decided by the Tribunal today.
4. The Major Works consist of preliminaries and scaffolding, external decorations, masonry repairs, window renewal and repairs, rainwater goods, concrete repairs and professional fees. In accordance with section 20 of the Landlord and Tenant Act 1985, as amended by the Commonhold and Leasehold Reform Act 2002, Notices of Intention and Estimates to Carry out

Works in respect of the Major Works were sent to the Applicants in May 2004 and August 2004 respectively. No observations were received by the Respondent from the Applicants in relation to either the notices or the estimates.

5. A pre-trial review was held on 23 March 2006 and directions made. These directions provided for notice of these proceedings to be given to all leaseholders in CMH and AHH so that they would have an opportunity to join in the proceedings should they so wish. No other leaseholder has joined the proceedings. In accordance with those directions statements of case were served by the parties and a bundle of documents prepared by the Respondent for use at the hearing ("Bundle 1"). At the hearing the Respondent also relied on documents contained within a second bundle of documents which had been prepared for use at the mediation ("Bundle 2").

Hearing

6. The hearing in this matter took place on 30 November 2006. The Applicants appeared in person and the case was principally presented by the First Applicant. Mr Bathia Solicitor, Mr Manzie a Building Surveyor, Mr Mehew, the Major Works Team Leader and Mr Chandler, Clerk of Works, all employees of the Respondent, appeared on behalf of the Respondent.

7. At the commencement of the hearing the First Applicant informed the Tribunal that all the items contained within the Major Works were still challenged, including the preliminaries and scaffolding which were the subject of the mediation agreement dated 25 September 2006 despite the mediation agreement having been signed by the First Applicant. However the Tribunal were unable to consider the costs of the preliminaries and scaffolding in respect of CMH as they were the subject of a binding mediation agreement contained at pages 66-7 of Bundle 1. The preliminaries and scaffolding costs in respect of AHH did not form part of the mediation agreement and were therefore considered by the Tribunal. Each of the remaining items included in the Major Works was considered in turn by the Tribunal in relation to both CMH and AHH as set out below.

(a) External decorations

8. The total sums claimed by the Respondent in respect of CMH and AHH were £26,000.91 and £23,024.60 respectively. Of this total expenditure the Applicants were each charged an apportionment (see below). The Tribunal noted that although this item was headed "external decorations" it also included internal decorations.

9. The First Applicant submitted that the workmanship in respect of the external decorations and repair had been poor. She gave evidence that the work had been carried out so quickly that no preparation could have possibly taken place as claimed by the Respondent which meant that the quality of the work was adversely affected. She referred the Tribunal to a photograph of some railings in the interior of CHH at page 53 of Bundle 1 taken in summer 2006 which she submitted showed the poor workmanship and missed parts where railings had not been painted properly. She also submitted that the works were simply not value for money. As far as AHH was concerned the Fourth Applicant's evidence was that the paint on the windows started to peel only a few weeks after the work had been completed and the work had not been carried out properly. He also gave evidence that his windows were still stuck with paint and could not be opened.

10. In reply Mr Bathia disputed that the workmanship had been poor and that any paint had peeled. The Tribunal was provided with a photograph showing the process followed when repairing and painting the wooden sash windows and evidence was given that this process would have taken place over a period of 3 days. As far as any sticking of windows was concerned Mr Mehew gave evidence that the windows had been painted in winter and this meant that the residents had closed them sooner than desirable and they had not been allowed to dry properly after painting. However Mr Manzie gave evidence that when the Respondent had been advised of any windows which had stuck the workmen had been instructed to unstick them at no extra cost. The Respondent also gave evidence that it was unaware of any complaint in relation to the windows sticking having been made by the Fourth Applicant prior to the hearing.

(b) Masonry Repairs

11. Masonry repairs were charged at a cost of £1,097.00 and £1,745.00 to CMH and AHH respectively, the total sum again being apportioned between the leaseholders. Mr Manzie provided a brief description of the work carried out under this heading which included pointing of the external brickwork, rendering repairs, removing limescale deposits and carrying out brickwork repairs. Reference was made to pages 418 and 419 of Bundle 2 which contained a detailed breakdown of the works carried out under this heading to CMH.

12. The First Applicant's evidence was that no such work had been undertaken either to CMH or AHH as she felt sure that she would have seen or heard the works being carried out. The Fourth Applicant's evidence in relation to AHH was that he was not an expert and therefore had no way of knowing whether the works had been carried out or not.

13. In response the Respondent made reference to site instructions at pages 345, 351, 364 and 399-400 of Bundle 2 which made specific reference to the masonry repairs carried out and detailed when workmen had been on site carrying out these works.

(c) Window Repairs/Windowcare

14. Window Repairs were charged at a total of £5,861.90 and £7,346.60 in respect of CMH and AHH respectively, again this cost being apportioned amongst the leaseholders of each block. Mr Mehew provided the Tribunal with a summary of the work undertaken under this heading. He explained that a lot of the windows on the front elevation required work to conservation joints to wooden sashes, which needed routing out, a primer applied and to be filled subsequently with windowcare. The Tribunal heard that while it had been necessary to replace 2 or 3 windows completely on the estate, no renewals were necessary to the subject blocks. Under this heading the Respondent had also included the cost of washing down and cleaning the UPVC windows to the rear elevation and of cleaning down the wooden framed windows to the front elevation. The Tribunal also heard that after the concrete repairs had been carried out there would have been a lot of dust and therefore the washing down of all windows would have been necessary.

15. The Applicants did not accept that these works had been carried out and again pointed to the fact that as they were not trade professionals they were unable to verify if the works claimed had been carried out or not.

(d) Rainwater Goods

16. Rainwater goods were charged at a total of £250 in respect of both CMH and AHH. A summary of the works carried out under this heading were included in Bundle 2 at pages 405 in respect of AHH and at page 424 in respect of CMH. This heading also included the removal of rubbish and accumulated dirt from the pipes which would then be flushed through with water to prevent future problems with blocked pipes.

17. It was the Applicants' case that this work had not been carried out and that the only work which they had evidenced was the painting of the exterior and interior common parts.

18. In response the Respondent advised that work had been carried out to the guttering to clear and produced to the Tribunal a document headed "Clerk of Works Report" dated 1 December 2004 which itemised the number of workers on site each day over a one week period. The Tribunal heard that this was a typical report which itemised the workers on site and which showed that between 16 and 24 operatives were usually engaged on site. The Applicants made no comment in relation to this document.

(e) Concrete Repairs

Concrete repairs were charged at a total of £9,617.70 and £9,377.70 in respect of CMH and AHH, the total cost again being apportioned. A summary of the works undertaken under this heading was included at pages 425-6 and 406 of Bundle 2 in respect of CMH and AHH respectively. Mr Manzie gave evidence on behalf of the Respondent that the main work carried out in respect of concrete repairs took place in the communal hallways of the blocks. He referred the Tribunal to a photograph at page 45 of Bundle 1 of some repairs carried out to Kier Harding House, one of the blocks forming part of the estate upon which CMH and AHH are situate. The Tribunal heard that this was typical of the construction contained within all blocks and the repairs necessary.

19. The Second Applicant accepted that concrete repairs had been carried out to the balcony at her property but submitted that the charge made in respect of concrete repairs overall was too great. Likewise the First Applicant also accepted that some work had been undertaken in relation to this category as she had heard some drilling. The Fourth Applicant's evidence again was that as he was not an expert he could not say whether the work had been carried out or not.

(f) Professional Fees

20. Professional fees were claimed on the cost of the total works at 3.55% at a total sum of £2,091.57 and £1,809.01 in respect of CMH and AHH. The Applicants accepted that some fees were due in respect of supervision as they agreed that some works had been carried out. However their evidence was that the rate claimed of 3.55% was too high although they were not able to offer any alternative figure which they said was reasonable. The Third Applicant gave evidence that the rate charged had been simply plucked out of the air and had no real basis.

21. On behalf of the Respondent Mr Bathia gave evidence that the rate of 3.55% claimed was a much lower rate than that generally expected for managing major works programmes which usually ranged between 7-10%.

(g) Preliminaries & Scaffolding

22. As referred to above the Tribunal considered the cost of the Preliminaries and Scaffolding in relation to AHH only. This was claimed at an average cost of £482.70 per unit, which is directly comparable to that being claimed in respect of CMH and the other blocks.

23. The Fourth Applicant's evidence was that he was unable to say whether this was a fair charge or not as he was not an expert in this field. In reply evidence was given on behalf of the Respondent that the cost of the scaffolding was always competitively tendered and negotiated and was a fixed charge. The Tribunal heard evidence from the Respondent that the amount negotiated represented the most competitive price obtainable.

(h) Apportionment

24. The manner in which the contribution payable by each of the Applicants had been assessed was set out at page 4 of the Respondent's Reply at page 41 of Bundle 1.

25. The Tribunal heard from the Respondent that pursuant to paragraph 5(3)(f) of the Lease it had the right at any time fairly and reasonably to substitute a different method of calculating the service charge attributable to the leaseholders. The method of apportionment adopted was to divide the costs by the number of units in the building. If the property was a 2 or 3 bedroom flat then that was their estimated cost. If they occupied a 1 bedroom flat there was a 10% reduction; a bedsit attracted a further 10% reduction whereas if they occupied a 4 bedroomed flat there was a 10% addition.

26. The Tribunal heard evidence from the Respondent that this was a similar methodology to using floor area and that the costs per unit using floor area would be very similar. The Tribunal heard that this method was used across the whole of the stock of the London Borough of Islington as it seemed to the Respondent to be the most effective and efficient. The Respondent stressed that the cost of works was always calculated from the final figures appropriate to the individual block not to the contract, which may be estate wide, as a whole and thus the reason why leaseholders with similar sized flats but in different blocks were being charged differing amounts.

27. The Applicants were unhappy with the way that the costs of the works had been apportioned between the leaseholders. The Applicants' evidence was that the approach used by the Respondent to apportion the costs was unreasonable. The Fourth Applicant in particular felt that this approach meant that he paid an inflated share compared to the leaseholders of other blocks. The Third Applicant gave evidence that in his view there were more imaginative ways of apportioning the costs but he did not offer the Tribunal any alternatives.

Inspection

28. We inspected the exterior and interior of CMH and AHH on the afternoon of 30 November 2006 after the hearing in the presence of the First, Second and Fourth Applicants and Mr Bathia, Mr Mehew, Mr Chandler and Mr Manzie of the Respondent.

29. CMH and AHH are purpose built brick three storey buildings with tiled roofs constructed in the 1930s or thereabouts. They have wooden windows to the front elevation and UPVC windows to the rear. Enclosed entrance porches lead to the common stairways. The elevation fronting Hornsey Lane has sliding sash and casement windows and French doors at ground level.

30. On the exterior of both CMH and AHH we saw tile repairs and replacement of tiles to the roofs and repairs to copings, repointing and repairs to the brickwork. We also saw repairs to the stone windowsills and concrete and other repairs to the balconies and walkways.

31. The exterior paintwork was seen to be in good order. The Fourth Applicant pointed the Tribunal to what he said was peeling paint to the front elevation but none was seen by the Tribunal. The downpipes and outside railings were also painted and they were likewise in sound condition although the Tribunal did see some minor misses behind the metal pipes.

32. At the rear elevation the windows were in sound working order. The Tribunal could not say whether the windows had been washed down 2 years ago although they were clean on the day of inspection. Some of the brickwork to the rear elevation was painted and seemed to be in good decorative order. Some staining to the underside of one communal walkway to the west end of the block was noticeable.

33. We inspected several communal staircases within both CMH and AHH which had been painted and presented in good decorative order. The front doors to each flat had also been painted and were likewise in good order. The Tribunal inspected the stairway balustrade railings within both AHH and CMH. In particular the First Applicant pointed out balustrade railings within CMH which led to her flat. Here we saw evidence of very slight chipping to the railings and some minor misses where gloss had not been applied. In the other stairwells we saw staircases which had more chips but in these stairwells there was evidence of bicycles and other items being stored in the stairwells. Patches of undercoat and more chips were seen at

the bottom of the stairwells which was suggestive of impact damage having caused the chips rather than defective workmanship.

34. The Tribunal also saw windows in the First Applicant's flat and a window in the Second Applicant's flat. The First Applicant pointed out that part of her sash window to the front elevation had not been painted. However this unfinished timber lining to the box frame would appear to be an internal part of the window which did not form part of the Respondent's repair liability. No evidence of any peeling or flaking paint was seen to the windows to the Second Applicant's flat.

Decision

(a) External Decorations

35. The Applicants accepted that decorations had been carried out but submitted that the workmanship was poor and the cost too high. However on inspection the Tribunal noted that the standard of decoration both externally and internally was good. The Tribunal saw no evidence of peeling paint and the chips pointed out by the First Applicant were suggestive of impact damage rather than poor workmanship. Accordingly the Tribunal allowed all of the costs claimed under this heading as being reasonable.

(b) Masonry Repairs

36. The Applicants evidence in relation to masonry repairs was that they had simply not been carried out. However on inspection the Tribunal saw clear evidence of works carried out and saw site instructions referring to these works. The Tribunal found that the cost of these repairs was reasonable having regard to the work undertaken and accordingly allowed all of the costs claimed.

(c) Window Repairs/Windowcare

37. Again it was the Applicants' case that these works were simply not undertaken. On inspection the Tribunal had noted that the windows were in good working order and accepted the evidence given on behalf of the Respondent at the hearing in relation to the works carried out under this heading by reference to the documentation contained within Bundle 2. On the basis of their knowledge and experience the Tribunal found that the costs charged under this heading to be reasonable.

(d) Rainwater Goods

38. It was the Applicants' case that no works had been carried out under this heading. The Tribunal considered the documents produced by the Respondent in relation to these works and considered the total cost charged of only £250 in respect of both CMH and AHH respectively. The Tribunal found that the sum of £250 in both instances was a reasonable charge.

(e) Concrete Repairs

39. It was the Applicants' case that the sum charged in respect of these works was too great although it was accepted that some works at least had been carried out. On inspection the Tribunal saw evidence of concrete repairs to the walkways and balconies. The Tribunal considered the works carried out by the Respondent under this heading and the documents produced in support and concluded on the basis of their knowledge and experience and findings from the inspection that the charges made were reasonable.

(f) Professional Fees

40. The Tribunal considered what in the open market would be an appropriate and reasonable charge for professional fees in relation to the

management of a contract for major works such as this. The Tribunal also took into account the fact that the Applicants had failed to offer any evidence as to an appropriate charge. Accordingly on the basis of their knowledge and experience the Tribunal was satisfied that the professional fees charged of 3.55% were reasonable.

(g) Preliminaries & Scaffolding

41. The Applicants did not offer any alternative figure in respect of this heading. The Tribunal noted that the fee had been competitively tendered and found that the amount charged was a reasonable sum for the provision of preliminaries and scaffolding in relation to AHH.

(h) Apportionment

42. The Tribunal found that pursuant to the Lease the Respondent was entitled to fairly and reasonably substitute a different method of calculating the service charge. The Applicants gave evidence that the method adopted was unfair but failed to offer any alternative which they considered reasonable. The Tribunal considered the methodology adopted by the Respondent and on the basis of their knowledge and experience found this to be a fair and reasonable method of apportioning the service charges between the leaseholders.

43. At the hearing the Applicants made an application under Section 20C of the Act to limit the landlord's costs in the proceedings. The Respondent told the Tribunal that its costs would be in the region of between £7-8,000. The Third Applicant addressed the Tribunal on the question of costs in explaining that they had made the application not to be frivolous or cause trouble but because they felt the approach adopted by the Respondent was unfair. Further the Tribunal heard from the Applicants that the costs were high and that the Applicants would be unduly penalised if the Respondent were not to be limited in the recovery of its costs.

44. However the Tribunal noted that the Respondent has been entirely successful in defending the costs of the Major Works and its method of apportionment. The Tribunal therefore made no order as to costs in relation to section 20c it of course being open to the Applicants to make a further

application to the Leasehold Valuation Tribunal in respect of their liability to pay and/or the reasonableness of any legal costs charged to them pursuant to section 27(a) of the Act.

CHAIRMAN



DATE

11 January

2007