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MAN/00BR/LDC/2007/0003 &
MAN/00BR/LSC/2007/0001

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
for the NORTHERN RENT ASSESSMENT PANEL**

DECISION

LANDLORD AND TENANT ACT 1985 – SECTIONS 27A, 20C & 20ZA

Property: Flat 15 Milton Court, Bury Old Road, Salford,
Lancashire M7 4QX, and

Flats 1 – 30 Milton Court, Bury Old Road, Salford,
Lancashire M7 4QX
(in relation to the application under s20ZA only)

Applicant: Mr R J Golding

Respondent: Milton Court (Salford) Limited

s20ZA Respondents: Leaseholders of Flats 1 – 30 Milton Court

THE MEMBERS OF THE TRIBUNAL

Mr J W Holbrook LL.B

Mr M G A Hope BSc FRICS

BACKGROUND

1. On 20 March 2007 the Applicant, Mr R J Golding of Flat 15 Milton Court, Bury Old Road, Salford, Lancashire M7 4QX applied to the Leasehold Valuation Tribunal ("the Tribunal") under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of his liability to pay service charges in connection with his tenancy of that property. The application related to two separate service charge periods: namely, the year ending 30 June 2006 and the year ending 30 June 2007.

2. The Applicant also applied to the Tribunal under section 20C of the 1985 Act for an order preventing the Respondent, Milton Court (Salford) Limited, from

recovering costs incurred in connection with the proceedings before the Tribunal under section 27A as part of the service charge.

3. On 25 May 2007 the Respondent applied to the Tribunal for an order under section 20ZA of the 1985 Act dispensing with all of the consultation requirements contained in section 20 of the 1985 Act (and in regulations made pursuant to sections 20 and 20ZA) in respect of the works to the Property which were listed in that application. The Respondent also sought an order under section 20C.

4. No party requested an oral hearing in respect of any of the applications. On 17 April 2007, the Tribunal directed, inter alia, that the Applicant's applications under sections 27A and 20C of the 1985 Act could proceed by means of inspection of the Property and paper determination without a hearing. On 4 June 2007, the Tribunal directed, inter alia, that the application under section 20ZA could also be determined without a hearing, but that it should be determined at the same time as the other applications.

5. On 6 July 2007 the Tribunal inspected the Property in the presence of the Applicant together with Mr N Copeland (director of the Respondent company), and Mr B Baker (company secretary and leaseholder of Flat 18). The Tribunal reconvened later the same day to consider its decision at the offices of the Northern Rent Assessment Panel, 26 York Street, Manchester M1 4JB.

PRELIMINARY ISSUES

6. In his application to the Tribunal, the Applicant named Mr N Copeland as the respondent. As mentioned above, Mr Copeland is a director of Milton Court (Salford) Limited. In that capacity Mr Copeland organises the majority of the management of the Property, and his address is also the correspondence address for the company (although it is not the company's registered address). Nevertheless, it is Milton Court (Salford) Limited which is legally responsible for the management of the Property and for the operation of the service charge in relation thereto. That company, rather than Mr Copeland personally, is therefore the appropriate respondent in proceedings brought under sections 27A and 20C of the 1985 Act. Mr Copeland pointed this out in a letter to the Tribunal dated 30 March 2007, in which he also stated that he was prepared to accept service of proceedings addressed to the company at his address. Subsequent correspondence from Mr Copeland was sent on the letterhead of Milton Court (Salford) Limited, and was signed by Mr Copeland "for and on behalf of" the company. The reply to the Applicant's Statement of Case was also sent in the company's name. The Tribunal therefore concluded that it was appropriate to proceed on the basis that Milton Court (Salford) Limited is the Respondent in relation to the applications made by the Applicant.

7. In a lengthy manuscript addendum to his application, the Applicant wrote "I would like to know if you can appoint a new manager". This is clearly a reference to the Tribunal's power under section 24 of the Landlord and Tenant Act 1987 to appoint a manager in certain circumstances to carry out functions in connection with the management of premises. However, the Applicant did not make a formal application in this regard on the relevant pre-printed form, nor did he submit the appropriate application fee. In addition, there is no evidence to suggest that he had complied with the preliminary notice requirements set out in section 22 of the 1987 Act. In the circumstances, therefore, the Tribunal gave no further consideration to this aspect of the matter.

DESCRIPTION OF THE PROPERTY, ITS OWNERSHIP AND MANAGEMENT STRUCTURE

8. Milton Court comprises a development of 30 flats contained in three separate three-storey buildings, the flats being arranged in five groups of six around common entrance halls, refuse storage areas and stairways. The Property dates from about 1970 and is constructed with brick walls and solid floors under flat roofs (the roofs were not inspected by the Tribunal). The buildings are grouped around open plan common gardens and there are separate blocks of garages (19 in total), located to the rear of the estate. The Property is located in an established residential area just off Bury Old Road.

9. The Applicant is the leaseholder of Flat 15 Milton Court, which is a two bedroom flat located on the first floor of a block containing Flats 13 – 18. The Applicant holds the flat under a lease ("the Lease") dated 30 July 1971 made between J Firman & Son Limited (1), the Respondent (2), and Carrie Golding (3). The Lease was granted for a term of 999 years from 24 June 1970 and reserves a rent of £15.00 per annum. The Applicant is bound by a number of tenant's covenants in the Lease including, (at clause 3(5)(a)), a covenant:

"To keep the interior of the demised premises and every part thereof including all pipes wall plaster internal walls and partitions wires heating and sanitary apparatus therein and all additions thereto in good and substantial repair and condition."

10. Although the current landlord presumably continues to be entitled to collect the rent, it has no practical involvement in the management or maintenance of the Property, or in the assessment or collection of service charges.

11. The Respondent, Milton Court (Salford) Limited, is a limited company incorporated under the Companies Acts and registered under number 988900. It has a share capital of £150.00 divided into 30 shares of £5.00 each. One share is allotted to each of the 30 leaseholders of Milton Court. The Respondent is thus

wholly owned by the leaseholders of Milton Court, and its function is to act as the management company for the Property.

12. It is for this reason that the Respondent is a party to the Lease. The Lease contains a number of covenants made by the Respondent including, (at clause 4(1)(A)), a covenant that:

“the [Respondent] will at all times during the term hereby granted keep the foundations main walls timbers roofs main drains and sewers and the exterior of the building and every other building on the Estate and the interior and exterior of the outbuilding thereof respectively and the lift staircases halls passages and such other internal parts of the building on the Estate as shall or may from time to time be used by tenants of flats on the Estate in common with other tenants in good and substantial repair and in clean and proper order and condition and properly lighted and to clean the exterior of all windows not less than once a month.”

13. The Respondent's other obligations under the Lease include a duty to keep all fixtures and fittings in the common parts in good order and repair, to periodically paint the building's exterior wood and ironwork and the internal common parts, to maintain the grounds and boundaries of the estate, to insure those parts which are not demised to the individual leaseholders, and to indemnify the landlord against outgoings, including charges for utilities.

14. The effect of clause 5 of the Lease is to oblige the Applicant to pay an annual service charge to the Respondent in respect of the performance of the Respondent's duties under the Lease. The amount of the service charge is expressed as follows:

“such ... annual sum as may be determined by the [Respondent] as being necessary to ensure that each tenant of a flat on the Estate paying a like amount ... the aggregate sum received by the [Respondent] shall equal the aggregate amount properly and reasonably required to be expended by the [Respondent] and the amount of any reserves properly and reasonably required by the [Respondent] in connection with the performance and observance ... of the covenants on the part of the [Respondent] hereinbefore contained ... such annual payments to be made in advance by four instalments on the usual quarter days or at such longer intervals and at such other times as the [Respondent] shall in writing notify to the Landlord ...”

15. In essence, therefore, the Applicant's liability under the Lease is for one thirtieth of the amount properly and reasonably required by the Respondent in the performance of its covenants and in providing for a reserve fund (if any).

16. The Tribunal understands that, for all material purposes, the terms of the leases relating to the other 29 flats are identical to those of the Applicant's Lease, save that some of them include a garage within the demise and some do not.

RELEVANT MAINTENANCE AND SERVICE CHARGE HISTORY

17. The Tribunal was provided with copies of the service charge accounts for each service charge period beginning with the year ending 30 June 2002 and finishing with the year ending 30 June 2006. The Tribunal was also provided with the Respondent's budget for the year ending 30 June 2007. In his Statement of Case and supplementary submissions, the Applicant commented on various items within the service charge and, for its part, the Respondent provided a commentary on the service charge history in its Reply to the Applicant's Statement. In addition, the Tribunal also saw copies of the minutes of the Respondent's AGMs held in 2001, 2003, 2005 and 2006, as well as copies of a number of "newsletters" which Mr Copeland had sent to leaseholders from time to time.

18. From all of these documents it is apparent that, as from mid to late 2004, the Respondent's approach to the management of the Property became more proactive than it had been for a number of years previously. In particular, the condition of the balconies on the first and second floor flats became an issue of active concern, as did the condition of the timber and glazed panels to the front upper storeys of the common hallways.

19. Various works have been carried out to the development since 2004, including redecoration of the common entrance halls and stairways, replacement of the timber and glazed panels to the upper storeys of Block 7 – 12 with PVCu units, installation of security doors to the ground floor refuse areas, as well as the commencement of a rolling programme of works to overhaul all of the balconies on the estate. At the time of the Tribunal's inspection, these works had been completed in respect of the balconies in Blocks 1 – 6 and 7 – 12.

20. This increase in activity has been reflected in an increase in the levels of service charges made to the leaseholders. The annual service charge had increased from £340.00 for each flat in 1995 to £500.00 in 2005. However, with effect from 1 January 2006, the annual service charge increased to £800.00 for each flat (payable quarterly). In addition, and in particular recognition of the need to carry out works to the balconies, a one-off levy of £150.00 for each flat was added to the service charge instalment which became payable on 1 January 2006.

THE APPLICATION UNDER SECTION 27A OF THE 1985 ACT

The law

21. Section 27A(1) of the 1985 Act provides:

“An application may be made to a leasehold valuation tribunal 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, and
- (e) the manner in which it is payable.”

22. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

23. In making any such determination, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

“Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.”

24. Section 19(2) states that “where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

25. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.” In all of the provisions of the 1985 Act relating to service charges, the term “landlord” includes (by virtue of section 30) any person who has a right to enforce payment of a service charge. It therefore includes the Respondent.

The Applicant's case

26. The Applicant contests the amounts payable in respect of the two service charge periods ending 30 June 2006 and 30 June 2007 respectively. His reasons for doing so can be summarised as follows:

- Each balcony structure is included within the demise of the particular first or second floor flat to which it is physically attached. Consequently, the costs of maintaining the balcony structures should not form part of the general service charge.
- The works which the Respondent has carried out to the balconies in Blocks 1 – 6 and 7 – 12 (and which it proposes to carry out to the balconies in the remaining blocks) constitute works of improvement, rather than repairs, and so the costs of those works are not recoverable under the terms of the Lease. The same argument is advanced in respect of the works/proposed works to the timber and glazed panels to the front upper storeys of the common hallways.
- Costs incurred, or to be incurred, in relation to the balconies, and the timber and glazed panels to the front upper storeys of the common hallways, have not been/will not be reasonably incurred, either because the works did/do not require to be carried out, or because they could have been/could be carried out more cheaply.
- The amount of the annual service charges for the two years in question is unreasonable by virtue of the increase in the amounts of those charges in percentage terms, in comparison with the amounts of the service charges for preceding years.

Responsibility for the repair of the balcony structures

27. The provisions of the Lease make no mention of the balcony which is attached to the Applicant's flat – or, indeed, of any of the balconies attached to other flats. However, the Applicant produced a copy of a letter from his solicitors, messrs. Wolfson & Co., dated 1 December 2006, expressing the opinion that the balcony attached to the Applicant's flat is included within the premises demised by the Lease, and that consequently the Respondent should not ask the Applicant to contribute towards the costs of maintaining the balconies generally. This opinion was based on an inspection of the Lease plan and on the view that the expression "main walls of the building" (which are excluded from the demise by paragraph (C) of part I of the first schedule to the Lease) does not include a horizontal balcony.

28. Although the Applicant has exclusive use of the balcony in question (it can only be accessed by means of a door from the Applicant's living-room), the Tribunal did not accept the opinion of the Applicant's solicitors, and found that the balcony structure is not included within the premises demised by the Lease. In addition, accepting the Respondent's evidence that the leases of all of the other flats are in materially the same terms as the Lease, it follows that none of the

balcony structures are demised to individual leaseholders. The Tribunal reached this conclusion for the following reasons:

- An inspection of the Lease plan (a colour photocopy of which was submitted in evidence by the Applicant) indicates that the balcony is excluded from the demise. The Lease plan in fact includes two plans of the Property. The first – and larger – of these is a detailed plan of the first floor layout, on which the balconies to all the first floor flats are clearly marked. The second is a much smaller, and less detailed, site plan and it is on this smaller plan that the position of Flat 15 is delineated in red, in accordance with part I of the first schedule to the Lease. The balconies are not marked on the site plan. Nevertheless, the boundaries of the main walls of the building marked on the site plan can be aligned with those shown on the layout plan quite clearly and, when this is done, it is apparent that the red edging on the site plan excludes the location of the balcony.
- It is clear from the wording of the Lease that the intention of the draftsman was to include only the relevant internal parts of the building within the demise, excluding the external and common parts, and apportioning the repairing responsibilities between the Applicant and the Respondent accordingly. Thus, although the demise does include “the floor and concrete floor beams between the floor of the flat and the flat immediately below it”, the roof and main walls of the building are expressly excluded. The wall onto the exterior side of which the balcony structure is affixed is clearly a “main wall” (which is therefore excluded from the demise). It seems unlikely that the intention of the original parties to the Lease was to include within the demise a structure which is affixed in this manner.

29. In any event, the question of the extent of the demise appears to be something of a “red herring”. Even if the balcony structures are included within the individual demises (and, as stated above, the Tribunal did not accept this view), there is nothing in the Lease which, in consequence of this, would prevent the Respondent from recovering, by means of the service charge, costs incurred by it in the maintenance of the balconies. The Respondent simply has an obligation, under clause 4(1)(A) of the Lease to “keep ... the exterior of the building and every other building on the Estate ... in good and substantial repair”. “The building” is defined in clause 1 as “The Blocks of Flats of which the demised premises form part ...”. This is expressly inclusive of the demised premises, not exclusive of them.

30. The balcony structures are clearly part of the exterior of the buildings, and their maintenance is therefore properly the responsibility of the Respondent which, subject to section 19 of the 1985 Act, is entitled to recover the costs of such maintenance through the service charge.

Repairs and improvements

31. The Lease requires the Respondent to keep (among other things) the exterior of the buildings "in good and substantial repair" and permits it to recover by means of the service charge the costs properly and reasonably incurred in so doing. It does not permit the Respondent to recover the costs of making improvements to the Property. The Applicant contends that works in respect of the balconies, and the timber and glazed panels to the front upper storeys of the common hallways, are in the nature of improvements, rather than repairs.

32. At the time of the Tribunal's inspection of the Property, the Respondent had completed the overhaul of the balconies on two of the five blocks. It had also replaced one set of timber and glazed panels. The Respondent had yet to start similar works in respect of the remainder of the development. In addition, the Tribunal was provided with photographs of the buildings, showing their condition both before and after the works in question had been carried out.

33. The Tribunal noted that, in respect of the overhaul of the balconies, the works in question comprise making good the perimeter walls of each balcony structure; resurfacing the floor of the balcony; removing the rusted or decaying metal frame and wired glass inserts; making good the fixing points; supplying new wrought iron balustrading; and affixing this to the external walls of the building and to the aluminium capping placed over the upstand around the balcony base. The front elevation of the buildings is then redecorated.

34. The Tribunal made an external inspection of the two blocks to which these works have been carried out. It also inspected the remaining blocks, including an internal inspection of Flats 15 and 18 (the exteriors of which are among those which are yet to be overhauled). Whilst the balcony to Flat 15 was not noted to be in particularly serious need of attention, significant areas of rust to the metalwork were noted. In relation to the balcony to Flat 18, considerable flexing of the metalwork was also evident. A number of the other unrefurbished balconies were noted to be in poor condition, showing marked deterioration of base structures and cracking to many of the wire-glazed panels, and even the best of these will probably need attention in the near future.

35. With the exception of the unit which has now been replaced, the timber and glazed panels to the front upper storeys of the common hallways were observed to be showing significant signs of disrepair including rotting timber, loose glazing, and an absence of regular decoration and maintenance. They are now close to being in a dangerous condition (if they are not in such a condition already). Although one set of panels has been replaced with a PVCu unit as mentioned above, others have apparently had only the glazing replaced to date.

36. Although the works in question, particularly those in respect of the balconies, undoubtedly improve the appearance of the development (and, when

completed, are likely to give a substantial increase in the capital value of each of the flats), the Tribunal had no doubt that the works are in the nature of repairs, and are not "improvements". The original metal and wire-glazed balcony frames have been replaced with new wrought iron balustrading. Given the age and condition of the original structures, this is an entirely reasonable approach. Indeed, repairing the original metal frames and wire-glazing would probably cost more than the works which have actually been carried out. Having regard to the significant evidence of accrued disrepair to those parts of the development which have yet to be repaired, the Tribunal found that the nature and level of repairs which are being undertaken is no more than is required of the Respondent by the provisions of the Lease.

The standard of the works and the reasonableness of the costs incurred in carrying them out

37. In the opinion of the Tribunal, the necessary repairs which have been carried out to the balcony structures in Blocks 1 – 6 and 7 – 12, and the repairs to the timber and glazed panels to the front upper storeys of the common hallways, have been carried out to a reasonable standard.

38. Having inspected two copy estimates submitted by the Respondent, copies of the newsletters which the Respondent sent to leaseholders, and the Respondent's service charge budget for the year ending 30 June 2007, it was noted that the costs incurred in carrying out these works included £5,969.00 for the supply and fitting of 8 balcony rails; £3,370.00 for bitumen flooring; £2,320.00 for scaffolding; £5,000.00 for external redecoration; and £1,600.00 for the supply and fitting of replacement window units. In the expert opinion of the Tribunal, these costs were not unreasonable for the works in question.

The amount of the service charge for the relevant periods

39. Although it is clearly a relevant consideration, the fact that the amount of the service charge has increased by a significant percentage over a two year period does not, of itself, indicate that the amount of the increased service charge is unreasonable. The correct test (set out in section 19 of the 1985 Act) is whether the costs which are included in the charge have been reasonably incurred and, to the extent that the charge is payable before the costs are incurred, that the amount of the charge is reasonable.

40. In addition to costs in respect of the works described above, the service charge for the two years in question included costs in respect of other items (such as buildings insurance, utilities charges, and so on) the amounts of which the Applicant did not expressly challenge. The amounts of these service charges (which include a significant increase in some of the utilities charges) were approved at the Respondent's AGMs on 30 October 2005 and 17 December

2006 respectively. Effectively, therefore, they have been approved by the leaseholders themselves.

41. The Tribunal noted that the service charge accounts show that, going into the 2006 and 2007 service charge years, there were monies carried forward from previous years. As at 30 June 2005, the profit and loss account and balance sheet showed a balance carried forward of £2,782.00. By 30 June 2006, this figure had increased to £7,164.00. The Tribunal did not have full details of why this was the case, but it understood these monies to be required for necessary repairs (including those described above). The Tribunal also noted that there is no express provision within the accounts for reserve funds, and indeed the notes to the accounts show a nil figure in both the provision for general repairs and in the reserve for the roof (notwithstanding the fact that the Lease permits the Respondent to establish a reserve fund, and that this is a nearly 40 year old building which has suffered accrued repairs which should have been attended to in the past). It is therefore assumed that any credit balance which remains following expenditure on services in the year to 30 June 2007 will be put into these provisions as, in the Tribunal's experience of buildings of this type, it seems likely that some large items of expenditure will be required in near future.

42. Taking all of these factors into account, the Tribunal found that the expenditure indicated in the service charge accounts for the year ending 30 June 2006, and in the service charge budget for the year ending 30 June 2007, are within the amounts which it would anticipate for the management and maintenance of this estate. The Tribunal therefore found the service charges levied or demanded in respect of these periods to be reasonable.

43. It follows from these findings that the amount which is payable by the Applicant in respect of the service charge for the year ending 30 June 2006 is £800.00 (comprising two payments of £125.00 for the second half of the 2005 calendar year, two payments of £200.00 for the first half of 2006, and one payment of £150.00 in respect of the additional levy which was payable in January 2006).

44. The amount which is payable by the Applicant in respect of the service charge for the year ending 30 June 2007 is also £800.00 (comprising four payments of £200.00).

45. To the extent that payment remains outstanding, these sums are now payable in full by the Applicant to the Respondent.

THE APPLICATION UNDER SECTION 20C OF THE 1985 ACT

46. Subsection (1) of section 20C of the 1985 Act provides:

“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 ... 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.”

47. Section 20C(3) gives the Tribunal power to “make such order on the application as it considers just and equitable in the circumstances”.

48. For the reasons already stated, the Tribunal found that the Applicant did not have valid grounds for challenging the amount of the service charge, and consequently it saw no reason why the Respondent should be precluded from including the costs incurred in connection with the proceedings before the Tribunal in future service charges.

49. In addition, the Tribunal was mindful of the fact that, given that the Respondent is wholly owned by the leaseholders of the development, any costs incurred by it must ultimately be borne by those leaseholders (whether or not they form part of the service charge). It would not be just and equitable to relieve the Applicant of his responsibility to contribute to the costs occasioned by these proceedings when the other leaseholders will have no option but to contribute.

50. Accordingly, the application is refused.

THE APPLICATION UNDER SECTION 20ZA OF THE 1985 ACT

The law

51. The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”) apply where a landlord intends to carry out “qualifying works” which are to begin on or after 31 October 2003. The combined effect of sections 20(2) & (3) and 20ZA(2) of the 1985 Act, and of regulation 6 of the Regulations, is that the expression “qualifying works” means works on a building or any other premises where the amount which an individual tenant may be required under the terms of his lease to contribute (by the payment of service charges) to the costs incurred in carrying out those works exceeds £250.00.

52. The Regulations also apply where a landlord intends to enter into certain agreements for a term of more than twelve months. This aspect of the Regulations is not relevant to the present case.

53. Part 2 of Schedule 4 to the Regulations sets out certain requirements (“the consultation requirements”) with which a landlord should comply before carrying out qualifying works. These requirements are highly detailed. In summary,

however, the consultation requirements oblige a landlord to follow a four-stage procedure:

- First, the landlord must give notice to each tenant (and to any recognised tenants' association) of its intention to carry out the qualifying works. The tenants must be given an opportunity to make observations about the proposals and to nominate a person from whom the landlord should try to obtain an estimate.
- Second, having obtained estimates, the landlord must supply a statement giving details of at least two estimates (including at least one from a person wholly unconnected with the landlord) and also including any estimate received from a nominated person. The landlord must also provide a summary of observations received and its response to them.
- Third, the landlord must give notice of the time and place where all the estimates can be inspected. It must invite observations and must have regard to any observations made.
- Fourth, on entering into a contract for the carrying out of the qualifying works, the landlord must give notice setting out its reasons for awarding the contract, and summarising any observations received and the landlord's response to them. This final stage may be omitted if the landlord contracts with a nominated person or accepts the lowest estimate.

54. The effect of section 20 of the 1985 Act is that, unless either (a) a landlord has complied with the consultation requirements; or (b) the requirements have been dispensed with in relation to the qualifying works in question by a leasehold valuation tribunal, the amount which an individual tenant may be required under the terms of his lease to contribute (by the payment of service charges) to the costs incurred in carrying out those works is limited to £250.00.

55. Section 20ZA of the 1985 Act provides that where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Determination

56. The Respondent sought a dispensation in relation to all of the consultation requirements in relation to the following works:

- “The repair or rebuilding of some balcony walls.
- The replacement of the balcony rails.
- The tarmacing of the upper floor of balcony bases.

The repair of all external plasterwork.
The replacement of all external lights.
The painting of the exterior.”

57. The Tribunal noted that, with the exception of some external redecoration to the rear of the blocks, these works have already been completed in relation to Blocks 1 – 6 and 7 – 12. Taken together, the aggregate cost of these works is such that they are qualifying works to which the consultation requirements apply. The similar works which are yet to be carried out to the remainder of the Property will also be qualifying works.

58. The Respondent has not complied with the consultation requirements in relation to these works. However, that is not to say that there has been no consultation at all with the leaseholders in this regard. On the contrary, it is apparent from the minutes of the Respondent's AGMs, and from the newsletters sent to leaseholders, that there has been substantial consultation and that the leaseholders have had ample opportunity to make their views clear. The Tribunal understands that virtually all of the leaseholders are presently up to date with their service charge payments, and that those who object to the current management of the Property are in a significant minority. The Tribunal has received no objections to the section 20ZA application from any of the leaseholders (each of whom were sent a copy as a respondent to that application).

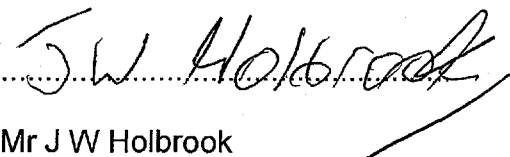
59. For the reasons already set out, the Tribunal concluded that the works in question are necessary in consequence of a substantial amount of accrued disrepair due to inadequate maintenance of the Property over a number of years. The Tribunal has also found that the works which have already been completed were reasonable both in terms of the standard to which they have been carried out and in terms of the costs incurred in doing so. The Tribunal therefore grants a dispensation of all of the consultation requirements in relation to those works.

60. In view of the similar nature of the works which the Respondent proposes to carry out to the remainder of the Property, and bearing in mind the consultations which have in fact taken place with the leaseholders, the Tribunal also grants a dispensation of all of the consultation requirements in relation to those of the works listed in paragraph 56 above which have not yet been commenced. It should be noted, however, that the Tribunal makes no finding about the reasonableness of any works which have yet to be carried out. It remains open to any leaseholder of the Property to make an application under section 27A of the 1985 Act in due course in respect of those works.

61. Finally, it was noted that, in connection with its section 20ZA application, the Respondent sought a limitation of costs order under section 20C of the 1985 Act. The Tribunal may only make such an order in relation to an application by a tenant, and it was therefore unable to do so in these circumstances.

SUMMARY OF DECISION

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62. The amount which is payable by the Applicant to the Respondent in respect of the service charge for the year ending 30 June 2006 is £800.00.
63. The amount which is payable by the Applicant to the Respondent in respect of the service charge for the year ending 30 June 2007 is also £800.00.
64. The Applicant's request for a limitation of costs order under section 20C of the 1985 Act is refused.
65. All of the consultation requirements contained in section 20 of the 1985 Act (and in regulations made pursuant to sections 20 and 20ZA) are dispensed with in relation to the works to the Property which are listed in paragraph 56 of this decision.



Mr J W Holbrook
Chairman

23 July 2007
