

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Residential  
Property**  
TRIBUNAL SERVICE

**JURISDICTION**

**Sections 27A and 20C of the Landlord and Tenant Act 1985**

**DECISION**

Case Number	CHI/43UB/LIS/2008/0029 (27A and 20C)
Property	Old Avenue House, Old Avenue, Weybridge, Surrey KT13 0PS
Applicants (Tenants)	Ijaz and Josephine Ahmad
Respondent (Landlord)	Old Avenue House Residents Association Limited
Date of Inspections	19 <sup>th</sup> September 2008 14 <sup>th</sup> January 2009
Date of Hearing	19 <sup>th</sup> September 2008 at Weybridge Hall, Church Street, Weybridge, Surrey 17 <sup>th</sup> & 18 <sup>th</sup> December 2008 at H G Wells Conference Centre, Church Street East, Woking, Surrey 14 <sup>th</sup> January 2009 at The Crown Hotel, 7 London Street, Chertsey, Surrey
Date of Decision	20 <sup>th</sup> February 2009
Tribunal Members	C.H.Harrison (Chairman) N.I.Robinson FRICS Mrs J.E.S.Herrington

## BACKGROUND

1. Lying at the heart of this case is the Applicant tenants' assertions that their resident association landlord implemented works to the property in 2005 and 2007 which were too narrow in scope; that the relevant costs were, therefore, unreasonably incurred; and that, even up to the beginning of the hearing, the Applicants are uncertain about the precise totals of the relevant costs because the landlord has not told them what they are.
2. Ijaz and Josephine Ahmad, who are the Applicants, are the owners of a lease of flat number 3, a garage and garden ground at the property which is known as Old Avenue House, Old Avenue in Weybridge, Surrey. Their landlord, which is the Respondent, is a company called Old Avenue House Residents Association Limited. Neither party was represented during the hearing. Mr Jones spoke on behalf of the Respondent.
3. It is common ground between the parties that the only members and shareholders of the Respondent company are the headlessees of each of five flats (and associated garages) comprised in the property. They are entitled to appoint directors of the Respondent's board who currently are and have, since the years indicated, been:

<u>Flat and garage number</u>	<u>Directors</u>	<u>Year</u>
1	Mrs Shirley Beckwith	2003
2	Mr Madhloom	1997
3	Mr Ahmad	2000
4	Mrs Timmins	2005
5	Mr Jones	2004

Mr Madhloom is a retired architect.

4. The Applicants' lease was made on 3<sup>rd</sup> May 1995 between (1) the Respondent and (2) Martin Piers Collard of whom the Applicants are successors in title. By clause (3)(a) of the lease, the Applicants are obliged to the Respondent to pay twenty per cent of the Respondent's actual costs and expenses incurred on matters described in the third schedule to the lease. It is also common ground between the parties that each of the other four leases of the remaining flats also reserves a 20% service charge.
5. It appears from the Applicants' lease that the annual service charge accounting period, over which amounts relevant to those obligations are quantified, ends on 25<sup>th</sup> December.
6. On 12<sup>th</sup> June 2008, the Applicants applied to the leasehold valuation tribunal of the Southern Rent Assessment Panel, under section 27A of the Landlord and Tenant Act 1985, for a determination of liability to pay certain service charges under their lease.
7. The application raised a number of questions which the Applicants wish the tribunal to decide. The questions, fundamentally, can be encapsulated as:

- a) what is the amount of the service charge for which the Applicants are liable under their lease in respect of works carried out during or in respect of the service charge accounting year ended 25<sup>th</sup> December 2005, relating to external painting and repair works awarded to a contractor at an initially proposed cost of £23,750 which, ultimately, was agreed at £46,340? The scope of that question was widened during the hearing.
- b) what is the amount of the service charge for which the Applicants are liable under their lease in respect of works carried out during or in respect of the service charge accounting year ended 25<sup>th</sup> December 2007, relating to works of substantial repair and refurbishment of the garage block at the property?

The Application raised other issues, all of which are referred to in this Decision.

8. Mrs Ahmad's brother, Mr Gould, was for sometime resident in the Applicants' flat and had been the Applicants' representative in the affairs of the Respondent company until the Applicants withdrew his representation in February 2005.
9. It is also relevant to the background of this case that, during 2004, the Respondent commissioned a report about the condition of the buildings on the property from Mr Simon T.F.Craig, RIBA, Chartered Architect. The report, dated May 2004, was titled *Inspection & Proposals Report: essential maintenance & building works Old Avenue House, Weybridge, Surrey*. Both parties referred to the report during the course of the hearing as the Craig Report, as it is referred to in this Decision.
10. The application includes a request for an order under section 20C of the 1985 Act.
11. On 17<sup>th</sup> December 2008, the tribunal determined, in respect of the works referred to in paragraph 7(a) and (b) above, that it was reasonable to dispense with the consultation requirements under section 20 of the Landlord and Tenant Act 1985 (CHI/43UB/LIS/2008/0029 (20ZA)).
12. Further background is explained more helpfully below at paragraphs 20 to 22 and 31 to 33.

## **THE TRIBUNAL'S INSPECTIONS OF THE PROPERTY**

13. The tribunal inspected the property on two occasions:
  - a) On 19<sup>th</sup> September 2008, in the presence of the Applicants and of the other headlessees of Old Avenue House:
    - i) The property was noted to be a large detached house probably built around the end of the 19<sup>th</sup> or early 20<sup>th</sup> century and converted into five flats around 1955, at which time it is understood that a separate garage block of four garages was also

constructed. A fifth garage (garage number 2) forms part of the main house and is let with flat 2 to Mr Madhloom.

- ii) The house has brick and part tile hung elevations under a multi pitched plain clay tiled roof and a portico to, presumably, the original main entrance with stone detailing. Not all the roof slopes were visible from the ground level inspection. Of the areas that could be seen, generally these appeared to have been quite thoroughly overhauled with replaced tiles, re-bedded verges and hips but some others still showed signs of wear with cracked and missing tiles. The brickwork and tile hanging generally appeared to be in good order. Many of the windows to the house are the original but some have been replaced with PVC-u units. The stonework and adjoining brickwork to the portico has deteriorated and repair is required. There were signs of water penetration internally to the portico but the tribunal was advised that this had occurred prior to the replacement of the flat roof over the portico and that the damage would be made good when the area is next redecorated.
- b) On 14<sup>th</sup> January 2009, in the presence of the Applicants and of the other headlessees of Old Avenue House, the garage block was further inspected:
- i) It is constructed of concrete blockwork to the side and rear elevations, rendered externally with a brick faced front elevation, all under a mineral felt roof. The roof was originally finished with corrugated panels of either asbestos cement or mineral fibre and the renewal using mineral felt forms part of the application to the tribunal. Some signs of old cracking were visible to the rendered elevations..
  - ii) Three of the four garage doors and frames had been replaced together with the lintels over the door openings to all four doors. The door to the garage forming part of flat 3 was open and some of the old corrugated roof panels and roof timbers could be seen, apparently stored inside.
  - iii) The pointing of the brickwork on the front elevation, at upper level above the door lintels, was noticeably different from the remainder of the pointing. The upper level pointing was materially lighter, wider and considerably more uneven in finish and overall appearance than the remainder. In addition, the concreting immediately beneath the upper level coping to the felt roof was, viewed from the rear, uneven and irregular and showed signs of not having been neatly finished. These two facets were clearly related to the work carried out to the garage block as part of the application which was before the tribunal.

## **RELEVANT LAW**

14. Section 27(A)(1) of the 1985 Act provides, so far as is material to this case, that an application may be made to a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, under paragraph (c), the amount which is payable.
15. Section 18(1) of the 1985 Act defines a service charge as an amount payable by a tenant of a dwelling as part of or in addition to the rent:
  - a) which is payable ... for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

- b) the whole or part of which varies according to the relevant costs (which are defined by section 18(2) as the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable).
16. Section 19(1) of the 1985 Act provides that 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
17. Section 20B of the 1985 Act imposes a qualified time limit on a tenant's liability to pay service charge demands. It is described more fully in paragraphs 93 to 96 below.
18. Section 20C of the 1985 Act provides that a tenant may apply to a leasehold valuation tribunal for an order that costs incurred, or to be incurred, by a landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs for the purpose of determining the amount of any service charge.

#### **THE PROVISIONS OF THE APPLICANTS' LEASE**

19. So far as material to this case, the Applicants' lease of Flat 3 provides that:
- a) the premises demised by it comprise:
    - i) Flat 3, including its windows, window frames and window sills;
    - ii) Garage no.3; and
    - iii) a garden,
 all of which are shown on two plans annexed to the lease and which the lease defines (clause (1)) as the demised premises. The responsibility for the doors to the garages is an issue in this case and is dealt with by this Decision.
  
  - b) at clause (4)(a), the Respondent landlord covenants with the tenant to insure the buildings at the property, ... at clause (4)(d), the Respondent *Landlord will maintain and keep in good and substantial repair and condition ... (i) the main structure of the buildings including the foundations external walls and the roofs of the buildings with their gutters and rain water pipes ...*, at clause (4)(f), *the Landlord will decorate the exterior of the buildings ... at intervals of not more than five years, and, at clause (4)(g), the Landlord will provide and supply such other services to the benefit of the Tenant and the Lessees of the other flats and parts of the buildings and carry out such other repairs renewals and works and defray such other costs as the Landlord shall consider necessary or convenient to maintain the buildings as good quality residential flats.*

- c) at clause (2)(g), the tenant will [repair] *the interior of the demised premises and all additions thereto and in particular (but not by way of limitation) to keep ... all windows doors ... and fittings of and used exclusively in connection with the demised premises properly ... repaired ...*
- d) at clause (3)(a), the tenant will *pay and contribute to the Landlord without any deduction by way of further and additional rent twenty per centum of the actual costs expenses and outgoings mentioned in the third schedule [to the lease] (... "the service charge") and*
- i) *the amount of the service charge and the Tenants contribution thereto shall be ascertained by the Landlord ... and shall if required by the Tenant and at the Tenants expense be certified by the Landlords accountants ( ... a copy of which shall be delivered to the Tenant ) once a year [on or as soon as possible after] 25<sup>th</sup> December in each year;*
  - ii) *the Tenant shall pay ... by equal half yearly payments in advance [on 25<sup>th</sup> December and 24<sup>th</sup> June in each year ... an adjustable annual sum as the Landlord or its agents consider adequate on account of the service charge] and shall within fourteen days of the delivery to the Tenant of the said certificate in each year pay the balance (if any) ascertained and certified as aforesaid;*
  - iii) *the Landlord ... shall in addition to the amounts paid or incurred during each year include such sum as the Landlord or its agents consider adequate which shall be retained by them as a reserve fund and be applied in or towards the payment of repairs to or replacement of the structure or exterior of the buildings ...*
  - iv) *the said certificate shall contain a summary of the Landlord's said costs expenses and outgoings incurred by the Landlord or its agents during the year to which it related including Value Added Tax thereon together with a summary of the relevant details and figures forming the basis of the service charge.*
- e) at the third schedule, the costs, expenses and outgoings referred to in paragraph (d) above include *All costs and expenses incurred by the Landlord for the purpose of complying or in connection with the fulfilment of its obligations under clause (4)(a) ... (d) ... (f) (g) ... of this Lease.*

The Respondent confirmed that the leases of the other flats are in substantially similar form.

## **THE EVIDENCE CONCERNING THE 2005 RELEVANT COSTS**

20. The application under section 27A makes clear that relevant costs incurred by the Respondent during the 2005 service charge year related, substantially, to the external redecoration (and some minor related repairs) and to some patchwork roof repairs to Old Avenue House. They are referred to in this Decision, together, as the 2005 works. The external redecoration and minor related repairs comprised in the 2005 works are referred to as the 2005 redecoration; and the patchwork roof repairs are referred to as such.

21. The 2005 works were carried out by a contractor called Mr Luke. He was one of two contractors who had submitted estimates for the 2005 redecoration.
22. The papers submitted to the tribunal in connection with the application and the Respondent's response to it, prior to the commencement of the hearing, did not include any statement of the overall service charge account for the 2005 service charge year, or any clearly related service charge demands, apparently despite the Directions issued by the tribunal to the parties on 17<sup>th</sup> June 2008. (Papers submitted by the Respondent in connection with its application under section 20ZA did, however, include a 2005 service charge record of monies received and paid.) The fact that the Respondent did not produce a statement of the overall service charge account until it was required to do so during the hearing put not only the Applicants but also the tribunal in an initial difficulty of understanding the detail of the 2005 relevant costs.

### ***The Applicants' submissions***

23. The Applicants submitted:

- a) There was a lack of transparency on the part of the Respondent. The Applicants had purchased Flat 3 in January 2000. No work had been carried out to the buildings for some time and it was difficult to gauge any firm proposals by the Respondent for what the Applicants considered to be required work. For that reason, the Applicants appointed Mr John Gould as their representative in 2002.
- b) The 2005 works were carried out, in some respects, contrary to the recommendations of the Craig Report. The Applicants refer to the Craig Report's summary which stated that various items of work were recommended for urgent attention. These included, from paragraph 3.09 of the Craig Report, "*Upper & Intermediate Roof Works: Must be dealt with within the next 1-3 years [from May 2004] as this is the most important element of the building that protects the long term investment in the property (include redecoration at this level and necessary scaffolding) – Budget £90-100,000 + VAT*" and "*Refurbishment/Redecoration Works: Must be dealt with within the next 2-5 years ... - Budget £30-40,000 + VAT*". The Applicants submit that the totality of the roof refurbishment work, and not merely the patchwork roof repairs, should have been carried out at the same time as the 2005 redecoration. They consider that, if all such work had been done at the same time, it would have been achieved at, ultimately, a lower relative price. The Applicants submit that, as a result, the relevant costs associated with the 2005 works were unreasonably incurred.
- c) Further to that submission, the Applicants assert that temporary work to the roof (which they say is what the patchwork roof repairs were) was not wise and that the Respondent should not have spent any money on work to the roof, short of whole scale refurbishment, because the Respondent had been advised by the Craig Report that the roof should be repaired as a whole and not in part.

- d) The Applicants call in aid of that assertion a letter which Mr Madhloom had written to all the other residents on 19<sup>th</sup> June 2005 in which he had written *If we are to proceed with this proposal it would be reasonable to expect the external woodwork decoration to be carried out at the same time, as the [Craig Report] also recommends* and in which he drew attention to the advice in paragraph 3.02(e) of the Craig Report *All refurbishment and redecoration at this level should be carried out at the same time as general roof works.*
- e) The quality of the 2005 works was compromised by the Respondent's wrongful acceptance of budgetary concerns expressed by some of its members (of which there was evidence in written correspondence). The Applicants submit the Respondent failed in its contractual commitments under the leases to implement proper repairs and had shown too much regard to the limited financial resources of a minority.
- f) The Applicants were referred, by the Respondent, to a letter which the Respondent requested Mr Craig to write (which he did) to the Residential Property Tribunal Service, dated 23<sup>rd</sup> August 2008, in which he said *What the Residents Association now choose to act upon, and when and how they choose to do it, will be dependent upon the circumstances in which they find themselves.* The Applicants submit that statement was made out of context and is irrelevant to their submission in paragraph (e) above.
- g) The execution of the 2005 works was not properly supervised. Indeed, the Respondent failed to appoint a supervisor at all. As a lay organisation, the Respondent should have ensured proper supervision of the 2005 works. The Applicants evidence their concern by referring to a communication from Mr Madhloom to Mr Gould, dated 22<sup>nd</sup> June 2005, and copied to the other directors of the Respondent, drawing attention to a difference of opinion which had arisen on the question of retaining Mr Craig as a supervisor. Mr Madhloom had declined to liaise between Mr Luke and Mr Craig. According to the Applicants, the Respondent should have involved Mr Craig in the procurement of estimates for the 2005 works and in their supervision. Its failure to do so was likely to lead to a less than satisfactory result. The Applicants referred to a letter Mr Craig had e-mailed to Mr Madhloom and Mrs Beckwith on 24<sup>th</sup> June 2005 stating that Mr Craig was unwilling to take responsibility for inspecting and signing off Mr Luke's work however well it may be carried out and that Mr Craig considered a recommendation he had earlier made concerning a particular method of timber repair would prove better than the work which was being implemented in fact. The Applicants assert from this letter that the work carried out in 2005 would have been more economic in the long run and completed to a better standard, had Mr Craig been appointed to deal with matters of procurement and supervision.
- h) The Applicants were referred by the Respondent to three issues concerning an invoice dated 23<sup>rd</sup> September from Mr Craig addressed to the Respondent and concerning the 2005 works:



- i) the Applicants do not accept that the narrative of the invoice, such as ... *all work in connection with advice given ...*, shows that Mr Craig had advised the Respondent that the patchwork roof repairs should be carried out. The Applicants submit it is merely an invoice and does not show that Mr Craig was supervising properly or that he had approved the scope of the patchwork roof repairs;
  - ii) nor do the Applicants accept that the invoice shows that Mr Craig was providing any supervisory services, because the invoice does not refer to supervision; but
  - iii) the Applicants do accept that the invoice evidences an appointment of Mr Craig.
- i) The relevant costs associated with the 2005 works were unreasonably incurred, not only because of the submissions referred to above, but also for each of the following reasons:
- i) the Respondent had written, or (as the tribunal deduced from the correspondence in evidence as a whole and which the parties did not deny) had prepared a draft of a letter to Mr Luke, in April 2005, stating ... *The company will appoint Mr Simon Craig, chartered architect as contract supervisor. He will be solely responsible for inspection, approving and signing work off as well as agreeing any contract variations as to scope and price...* . The Applicants pointed out that no such appointment had taken place.
  - ii) on 19<sup>th</sup> May 2005, Mr Madhloom had written to Mr Gould regretting that Mr Craig had not been given an opportunity of commenting on Mr Luke's estimate;
  - iii) on 29<sup>th</sup> May 2005, Mr Madhloom had written to the other directors of the Respondent's board, drawing attention to the fact that he did not then know whether Mr Luke had been appointed to carry out the 2005 redecoration was preventing Mr Madhloom from considering certain work practices recommended by Mr Craig; and
  - iv) Mr Craig had written to Mr Madhloom on 24<sup>th</sup> June 2005 stating that he, Craig, could help no further, apart from making use of the scaffolding which had, by that date, been erected as part of the 2005 redecoration to continue inspecting work in progress as a supplementary to the Craig Report. The same letter stated Mr Craig was *not prepared to officially inspect or sign off work which however well intended or executed does not accord with my recommendations for the long term benefit of all the owners and the Residents Association, but I am of course prepared to assist and continue to give advice on other matters.*

The Applicants submit these matters demonstrate there was a lack of control on the part of the Respondent and that it follows, by necessary implication, that the 2005 works' relevant costs were unreasonably incurred.

- j) The Respondent's board of directors had been dysfunctional. Mr Gould had failed to disclose to the Respondent's board that he had known Mr Luke for a significant period and that he was Mr Luke's accountant. Mr Craig's services had been prematurely curtailed. The Respondent or one of its directors had released the contract sum retention to Mr Luke before it was due for release. The Applicants assert from these facts that the 2005 works were carried out to an unreasonable standard.

- k) It was necessary for the Applicants to incur some £340 in repairing water penetration damage to their flat in August or September 2007. The Applicants' insurers had declined to meet a claim for the damage, in the absence of evidence the damage had been caused by an insured risk. The Applicants consider the damage was caused by poor execution of the 2005 works but told the tribunal that they did not propose to call any evidence on the matter.
  - l) The Respondent had failed to secure warranties from the contractor. Upon enquiry from the tribunal, the Applicants confirmed they consider the contractor, Mr Luke, should have been required to issue a warranty to the Respondent concerning the quality of the work executed or to be executed by him.
  - m) The tribunal put to Mr Ahmad that, although the Applicants appear to take the Craig Report as a 'fixed' document, it really represents a report at a moment in time; and asked him whether he accepts that the views expressed in the report may change from time to time. Mr Ahmad accepted that proposition.
24. The Applicants confirmed that they could provide no evidence that the 2005 works had been unreasonably incurred or had been carried out to a less than reasonable standard, beyond the submissions which they had made to the hearing. They concluded those submissions by pointing out that the Respondent's written response to the application before the tribunal repeatedly refers to the Applicants being in arrear with their service charge payments, to the fact that Mr Gould represented the Applicants and to the Respondent's assertion that Mr Craig supervised all the 2005 works. The Applicants asked the tribunal to appreciate that Mr Gould had not represented the Applicants since February 2005, that it is clear that Mr Craig did only a limited amount of supervision, that the Respondent had eschewed Mr Craig's advice (including advice that some expenditure was not in the common interests of the owners) and that the Respondent had paid unwarranted attention to the financial position of a minority of its members. For all these reasons, the Applicants had no confidence in the Respondent.
25. The Applicants submit they have a further important concern. They have had to come to a tribunal hearing to obtain, through the Respondent's written response to their section 27A application, copies of estimates and other detail of the costs of the 2005 works. The Applicants consider they have been disadvantaged by this lack of information; and even now do not know about the total expenditure of relevant costs during the 2005 service charge year. The tribunal had earlier disclosed to the parties that the tribunal considered that Mr Luke's estimate for the 2005 redecoration appeared reasonable. The Applicants accepted that opinion. What the Applicants are concerned about is (a) how the final bill was so much more than £23,750 and (b) the fact that the Respondent has not provided them with the information about relevant costs above that sum. It is that lack of information which makes the Applicants suspicious of the relevant costs incurred in 2005.

***The Respondent's submissions***

26. Before the Respondent gave evidence, the tribunal referred it to the Applicants' submission referred to in paragraph 25 above. The tribunal also explained its own difficulty of

understanding, as stated in paragraph 22 above, and asked the Respondent where among the papers, if at all, was it possible to discover an explanation of the relevant costs incurred during the 2005 accounting period, including details of relevant costs incurred on the 2005 works over and above the estimated £23,750 for the 2005 redecoration. Mr Jones told the tribunal that the Respondent did not have the relevant material available at the hearing venue and that it could be made available later that day. The tribunal, therefore, adjourned the hearing from 11.35 am until 1.00 pm on 18<sup>th</sup> December.

*The Respondent's production of a statement of overall relevant costs for the 2005 service charge year*

27. The Respondent subsequently produced a statement of 'List of Relevant Costs: Year ended 25 December 2005'. It shows a total expenditure of £63,508.31.

- a) the Applicants agreed expenditure on two items, not connected to the 2005 works, in connection with hedge trimming and a Companies House fee, totalling £415.
- b) the remaining balance of £63,093.31 included an invoice for £10,190 from Mr Luke for part of the 2005 works. It included a narrative for work done to the windows of flats 3 and 5. The tribunal told the parties that, in its opinion, the relevant tenants, and not the Respondent landlord, are responsible for the repair of window frames to the flats and that it is, therefore, not strictly correct that any one tenant should contribute towards expenditure which ought to be the responsibility of another. The Applicants objected to such a contribution. The parties agreed a deduction of £100 in respect of the flat 3 narrative and of £400 in respect of the flat 5 narrative.
- c) of the remaining balance of £62,593.31, the Applicants specifically disputed:
  - i) an item of £550 in respect of a 'tree removal', which was detailed on the statement to have been approved with no documentation;
  - ii) an item of £141 in respect of 'asbestos removal'; and
  - iii) the costs of the 2005 works over and above the agreed estimate of £23,750 for the 2005 redecoration including, in particular, two items for which no invoices had been produced by the Respondent for £5,000 and £6,500 paid to Mr Luke on 22<sup>nd</sup> October 2005 and 10<sup>th</sup> November 2005 respectively.

28. Following production of the statement:

- a) the Applicants requested that the tribunal should consider the statement as a whole in the context that the Applicants had not seen the statement before its production to the tribunal on that day, 18<sup>th</sup> December.
- b) the tribunal did not offer to adjourn the hearing during that day to give an opportunity for further consideration of the statement, because it was clear that the hearing would continue to another day in any event.

29. The Respondent submitted that a letter which had been written to Mr Luke on 1<sup>st</sup> August 2005 by four directors of the Respondent instructing him to proceed with the patchwork roof repairs had been written on the advice of Mr Craig who had, in fact, drafted the letter,

and that fact demonstrates the Respondent had involved Mr Craig in determining the scope of the patchwork roof repairs.

30. The Respondent contends:

- a) it knew what its responsibilities for the 2005 works were;
- b) the 2005 works were reasonably procured and executed and that no-one knew the extent of the repairs needed to the roof until the scaffolding had been erected, enabling a proper assessment;
- c) the Respondent knew at the time and continues to maintain that it was 'not real' to expect all tenants to pay the whole of the costs associated with the 2005 works and the total replacement of the roof at once.
- d) the Respondent had embarked on what it considered to be a reasonable programme – first the redecoration, then the garage block, then the roof.

### **THE EVIDENCE CONCERNING THE 2007 RELEVANT COSTS**

31. The application to the tribunal centres on a service charge demand for £2,000, on questions relating to the use of accumulated service charge funds and on the Applicants' assertions about the procurement and execution of repair and renovation work carried out in that year to the detached garage block at the property. That work is referred to in this Decision as the 2007 works.

32. The 2007 works were carried out by a contractor called House and Garden (Maintenance). It was one of four contractors who had submitted estimates for the 2007 works.

33. As in the case of the 2005 works, before the commencement of the hearing the tribunal had not received any clear particulars of relevant costs or related service charge demands for the 2007 service charge year, again in apparent disregard of the Directions referred to in paragraph 22 above. However, it was clear from papers submitted to the tribunal before the hearing that the relevant costs in dispute are in the region of £16,000.

#### ***The Applicants' submissions***

34. The Applicants contend that the work to the garages was clearly major, was carried out to a poor standard and at an excessive cost.

35. The Applicants also contend that service charge reserves should not have been used to fund the relevant costs or some portion of them and that the reserve fund should be replenished by the Respondent;

36. Significant reliance is placed by the Applicants on the Craig Report which, according to the Applicants, had advised demolition and reconstruction of the garage block. That is what the Applicants contend should have happened. The Applicants draw attention to an extract from Mr Craig's letter dated 23<sup>rd</sup> August 2008 (which was written to the tribunal at the Respondent's request) in which he stated *I wish to make clear that under no circumstances would I have suggested that the residents of OAH should not go down the route of repairing*

*the garage block instead of rebuilding it.* The Applicants dispute that assertion from Mr Craig. They refer to paragraph 3.08(a) of the Craig Report in which Mr Craig had reported on the garage block *This building was built in 1955 and is now in a very dilapidated state and should in due course be demolished and replaced with a new block with a pitched roof for storage, and of a size more suited to modern car dimensions.* The Applicants also refer to their e-mailed letter of 8<sup>th</sup> September 2007 to Mr Jones and copied to other members of the Respondent in which Mr Ahmad reported from his recent meeting with Mr Craig, who had advised that he could not recommend spending £16,000 plus on repairs and that the company should obtain a structural engineer's report to review the existing structure.

37. The Applicants also contend that the carrying out of the work to the garage block was neither in line with what the Respondent's board had earlier agreed nor in keeping with the overall interests of the property. On this contention, the Applicants referred to:
- a) the minutes of three board meetings of the Respondent:
    - i) held on 7<sup>th</sup> February 2006 (presented in evidence as draft minutes, but the parties confirmed they did not dispute their accuracy) in which it was resolved *that the garage block should be rebuilt in the current year* and that the Respondent would not award any future work without the award being in writing.
    - ii) held on 6<sup>th</sup> March 2006, resolving to obtain quotations for the proposed work involving building with bricks that matched the house with wider automatic doors and other specification matters,
    - iii) held on 31<sup>st</sup> July 2006, resolving to proceed with one change to the proposed specification which would require submission to the local planning authority for approval; and to proceed with an enclosed brick built bin-store. In particular, the Applicants contend that what the Respondent had agreed to do involved work of rebuilding requiring the grant of planning permission and not a mere repairing project.
  - b) drawings which had been submitted in evidence illustrating the proposed works and titled *Demolition and Rebuilding of Garage Block.*
38. The Applicants submit that, despite the matters referred to paragraph 37 above, the Respondent's assertions that there never had been a unanimous decision to demolish; that demolition and rebuilding was an option which had been discussed as part of an alternative option for repair; and that the decision to prepare plans and submit a planning application was considered a prudent process prior to the final decision on which option to adopt, are untrue.
39. The Applicants also submit that the decision to proceed with the repair work, which was taken sometime in 2007 without reference to the Applicants, was taken despite the Craig Report and despite a report which had been prepared in March 2006 by structural engineers, John Lucas Associates, addressed to Mrs Beckwith, and in which the engineers had stated *In view of the many defects noted during my brief visit, it would appear cost effective to demolish and rebuild rather than repair the building.*

40. On 14<sup>th</sup> March 2006, Mrs Beckwith wrote to Mr Jones, with copies to other members of the Respondent, referring to her meeting with Mr Lucas, the structural engineer who had produced that report. The e-mail reported a discussion with Mr Lucas about extending the footprint of the garage in order to accommodate more modern sized cars. The Applicants contend that this design proposal was disregarded by the Respondent's decision to proceed with repair, as were the Applicants' subsequent proposals to obtain a further structural engineer's report and, in August 2007, to seek mediation of the difference of opinion between the Applicants and the Respondent which had, by then, surfaced.
41. The Applicants further evidence their contention that the 2007 works were not reasonably incurred and were not done to a reasonable standard by the following matters:
- a) that no specification of required work was given to the building contractors who had been requested to give quotations and that the contractors had made bids on different bases. In particular:
    - i) a form of tender which the Respondent had prepared for demolition and rebuilding had not been submitted.;
    - ii) all bar one of the quotations was silent on the issue of warranties;
    - iii) one quotation mentioned that the structure might not support the roof; and
    - iv) one quotation referred to a ten year guarantee;
  - b) the Respondent's disregard of the Applicants' suggestion that it would be sensible, before incurring £16,000, to spend a few hundred pounds on further investigation of the garage block's condition through a further structural survey;
  - c) there is evidence of cracks in the wall of the garage block. The brick-work pointing is of a poor quality. The work is totally out of context of the standards of the building as a whole;
  - d) being aware of the detail involved in works of even temporary repairs, as to which the Applicants pointed to a letter which Mr Madhloom had written to the other residents on 28<sup>th</sup> January 2007 which described the anticipated extent of the work, the Respondent ought not to have employed a contractor whom the Applicants regard as inexperienced. They referred the tribunal to Mr Madhloom's email to the other residents of 24<sup>th</sup> June 2007 in which he had written *My knowledge of Larry's work is limited to the small job of wall papering repair he did in our flat latterly. He did a good job and at a reasonable price;* and
  - e) apparent concerns about the intention to repair as distinct from demolishing and rebuilding, expressed by Mrs Beckwith in April 2007, summed up by her statement *I am concerned that any quick repair job will only be a short term measure, and that without any real foundations the problems will only manifest themselves again within a few years.*
42. The Applicants also invite the tribunal to take account of the following matters:
- a) their repeated requests to inspect relevant papers have been stonewalled by the Respondent,
  - b) the Respondent's request to the Applicants that they should not approach individual tenants about the 2007 works;

- c) that the Respondent's assertion that the Applicants were initially in favour of the 2007 works, as evidenced by their statement in an e-mail of 26<sup>th</sup> June 2007 that *However, if other residents are convinced that everyone's money will be well spent on a repair job, as proposed by H&G we will go along with that* was unfounded. The Applicants state the quotation is taken out of context because the same communication urged the Respondent to consider various matters including the structure and the foundations of the garage block and the wisdom of incurring interim expense (as per paragraph 41(b) above); and
  - d) the Respondent's failure to respond to efforts which the Applicants had made to resolve the dispute which had arisen between the parties by September 2007 concerning the scope of the 2007 works.
43. The Applicants contend that the 2007 works were completed to less than a reasonable standard because:
- a) the garage door to the Applicants' garage number 3 had not been repaired as part of the 2007 works at all. The Applicants say that it should have been so repaired and that all garage doors should have a uniform appearance in keeping with the standard of Old Avenue House itself, as they had pointed out at the Respondent's board meeting on 26<sup>th</sup> September 2007. In that context, the Applicants assert that the Respondent landlord's repairing obligation at clause (4)(d)(i) (see paragraph 19(b) above) extends to the doors to each garage located in the block;
  - b) cracks are still visible in the rendering;
  - c) the pointing to the upper courses of brickwork has been done shoddily. The overall appearance is poor;
  - d) taken overall, the garage block in appearance and quality is not in keeping with Old Avenue House;
  - e) the contractor was not a bricklayer, he was a painter;
  - f) a reasonable standard could have been achieved only by a demolition and rebuilding operation,
- and the Applicants also regret the internal condition of their own garage in which the Respondent has placed some of the old roofing materials.
44. The Applicants finally contend that £8,000 was held in the service charge fund as a reserve towards intended work to the porch of the main building; that the reserve was wrongly utilised for the 2007 works; and that the Respondent should repay an equivalent amount to the reserve.
45. The tribunal asked the Applicants if they had a view on whether, despite their concerns about the scope and quality of the 2007 works, £16,000 was a reasonable price in the context that the Respondent had opted for a temporary repair job. The Applicants made clear that they did not think it was reasonable for the Respondent to incur any expense on temporary repair work having regard to the advice in the Craig Report. The Applicants also stated they did not, even then, know the precise cost which had been incurred for the shoddy work which had been done.

### ***The Respondent's submissions***

46. The Respondent made the following submissions in response:

- a) the Respondent had decided to pursue its investigations about the possibility of demolishing and rebuilding the garage block, but never to the exclusion of more limited repair, in order to keep its options open;
- b) the repair option, as a project of temporary repair, was ultimately chosen having regard to complexities which were foreseen by the Respondent on demolition and rebuilding, such as the possible need to use more land for a rebuilding than is taken up by the garage block's current footprint; and to the knowledge that the main building's roof would need expensive repair in the relatively short term;
- c) in all the circumstances, choosing the temporary repair option was a reasonable decision;
- d) the reason why the Applicants do not have particulars of the service charge accounts for the accounting period ended 25<sup>th</sup> December 2007 is because they have not paid their service charges;
- e) the Respondent had considered which party was responsible for the repair of the doors in the garage block and had concluded, it seemed to the tribunal with some uncertainty, that the landlord's obligation at clause (4)(d)(i) of the lease extends to the doors all of which were, anyway, in working order;
- f) contrary to the Applicants' assertion that the contractor who executed the 2007 works was inexperienced, they had confirmed to the Respondent by the email of 26<sup>th</sup> June 2007, referred to in paragraph 42(c) above, that, so far as the Applicants were concerned, the Respondent could proceed with the contractor if the other residents were content, which they were;
- g) the Respondent did not pursue the Applicants' exhortation to obtain a further structural survey because it did not think one was appropriate for works of repair. In particular, the Respondent considered that the vertical cracking in the elevations of the garage block was less important than the horizontal cracking, although both would be addressed by the repair proposal. The Respondent was aware that the floors of the garages evidenced damp which was, in the Respondent's opinion, caused by surface water penetration which would be cured by the repair proposal.
- h) Mr Craig had, himself, advised in his letter dated 23<sup>rd</sup> August 2008 that it was up to the parties whether to opt for repair or rebuilding.
- i) the 2007 works were intended to achieve proper repair in order to keep the garage block in a serviceable condition for a reasonable period. It was a temporary repair and, as such, provided value for money.
- j) the Respondent admits there is a difference in the appearance of the brickwork pointing at the upper level of the front elevation of the garage block. However, the Respondent considers that the pointing reflects a reasonable standard of work in the context that the 2007 works were for a temporary purpose and represents value for money.

*The Respondent's production of a statement of overall relevant costs for the 2007 service charge year*



47. The tribunal pointed out to the Respondent that it had not produced any statement of relevant costs associated with the 2007 works. Mr Jones confirmed such a statement could be produced after a short adjournment. Subsequently, the Respondent produced a statement entitled *Landlord's statement of account in respect of Tenants' service charges, other income and relevant costs for the year from 26 December 2006 to 25 December 2007*.
48. Before the Respondent handed a copy of the statement to the Applicants, Mr Jones requested the tribunal to confirm that the Applicants would be required to return the copy statement to the Respondent at the close of the hearing in view of the fact that the Applicants had failed to pay the service charge due under their lease. The tribunal refused the request.
49. The Applicants told the tribunal that they had not seen the 2007 statement before. The tribunal offered them an adjournment in order to give sufficient time to study the statement. Both Applicants declined the offer.
50. The statement includes an accounting period opening and closing service charge balance per flat:
- a) the opening balances are, for all practical purposes, the same. They total £6,763.98.
  - b) the closing balances for Flats 1, 4 and 5 are almost the same, at £364.66 or £364.65 in credit per flat.
  - c) Flat 3 shows a debit balance of £845.34. The Applicants dispute that debit balance.
  - d) the closing credit balance for Flat 2 is higher than the other closing credit balances because, as the Respondent explained, Mr Madhloom, whose garage is located as part of Old Avenue House, had been given a credit against part of the 2007 works cost (that part being £2,250) which reflects an improvement to the garage block's roof as distinct from a repair.
  - e) the statement also includes a note *At 25 December 2007, service charges due from all flats had been received with the exception of flat 3, which was £2,200 in arrears.*
51. The statement also lists aggregate relevant costs for the service charge year of £18,512.84 of which expenditure of £15,537 is categorised as *Redecoration, repairs and maintenance*. The Applicants confirmed they wish their application to be determined only in respect of so much of that expenditure as relates to the 2007 works namely, as the parties and the tribunal established, £15,010.
52. The statement also evidences an equal 25% apportionment of the amount of £2,250, referred to in paragraph 50(d) above, i.e. £562.50, between Flats 1,3,4 and 5.
53. Before the Respondent resumed its submissions to the tribunal, the Applicants were given an opportunity of raising issues on the statement which the Respondent had produced. The issues are:
- a) the Applicants confirm they had agreed to pay a 25% share of the garage roof improvement but only in respect of a demolition and rebuilding project. They had not agreed to bear more than their normal service charge proportion of 20% of the roof

improvement cost as part of an overall repair but would have done so had the repair option been supported by professional advice.

- b) the Applicants dispute the note referred to in paragraph 50(e) above because it fails to reflect, as they submit and which the Respondent did not deny, that the Applicants had been allowed a service charge credit of £1,000 in respect of the saved cost achieved by the 2007 works not extending to the replacement of their own garage door.
- c) the Applicants also query the detail the Flat 3 closing balance.

54. The Respondent confirmed to the tribunal that it cannot point to an agreement by the Applicants that they would bear 25% of the cost of the roof improvement; but the Respondent contends the Applicants had not disagreed the proposal.

55. The Respondent explained, in response to the Applicants' question, that its reference to 'temporary' repairs reflects the Respondent's recognition that the roof of the main building would need to be fully repaired in 10-15 years time. The Respondent considers that it was reasonable to defer the garage block rebuilding until that time and that intermediate repair, achieved by the 2007 works, was reasonable in the meantime.

56. The Respondent submits:

- a) that it conducts its business by adopting the majority decisions of its board. On that basis, the Respondent came to the reasonable view that the repair option was reasonable, as was its estimated cost;
- b) so far as the quality of the work is concerned, "it is not the best job in the world" but was done reasonably.

The Respondent also offered to produce for the tribunal a certified 2007 service charge statement which is precisely the same as the uncertified statement it had produced to the hearing that day. The tribunal declined the offer.

## **MATTERS DETERMINED BY THE TRIBUNAL**

### Findings of fact

57. The tribunal finds the following matters of fact:

- a) The total costs incurred by the Respondent referable to the 2005 service charge year, as stated in the 2005 list of relevant costs, is £63,508.31. From this should be subtracted the agreed deduction of £500 referred to in paragraph 27(b) above, resulting in total costs of £63,008.31 for consideration by the tribunal.
- b) The total costs associated with the 2005 works is £59,706.84;
- c) Of that total:
  - i) the 2005 redecoration, excluding scaffolding, accounts for £23,750.00
  - ii) the patchwork roof repairs accounts for £22,090.00
  - iii) **Sub-total** **£45,840.00**
  - iv) Mr Craig's fees £4,392.34
  - v) the scaffolding cost £8,563.87
  - vi) CBE, professional fees £910.63

**Total**

**£59,706.84**

It is not clear from the evidence, apart from the evidence of the dates included in the statement of 2005 relevant costs itself, precisely when these amounts (some of which were paid in stages) were incurred by the Respondent. The statement sets out dates in respect of each payment and the tribunal takes those as the dates on which the specified costs were incurred, even though it recognises that the payments may have been incurred as a matter of contract at an earlier date:

Relevant costs	Latest date by which the costs were incurred
Mr Craig's fees of £1,178.64	4 January 2005
Mr Craig's fees of £3,213.70	23 September 2005
<b>Sub-Total: £4,392.34</b>	
<b>Mr Luke, the 2005 works contractor</b>	
£3,550.00	5 July 2005
£4,900.00	15 July 2005
£4,000.00	29 July 2005
£4,000.00	16 August 2005
£[10,190.00] (net £9,690 reflecting £500 deduction as per paragraph 27(b) above <sup>4</sup> )	19 August 2005
£4,000.00	2 September 2005
£5,000.00	22 October 2005
£6,500.00	10 November 2005
£4,200.00	1 December 2005
<b>Sub-Total: £45,840.00</b>	
CBE, professional fees of £910.63	4 <sup>th</sup> January 2005
The scaffolding cost of £8,563.87	14 July 2005
<b>Total £59,706.84</b>	

- d) the remainder of the costs incurred by the Respondent during the 2005 service charge year, reflecting the matters agreed between the parties, as per paragraph 27(a) above but subject to the tribunal's decision in paragraph 77 below, is £3,301.47. That amount comprises the amounts, incurred on the dates (on the same basis as referred to in paragraph (c) above) and in respect of the works or services specified in the table below:

Relevant costs	Date incurred	Works or services
£550	22 March 2005	Tree removal
£1,954.60	22 March 2005	Insurance
£130.42	13 June 2005	Dynorod
£141	14 July 2005	Asbestos removal
£385 (expenditure agreed)	22 September 2005	Hedge trimming
£110.45	10 November 2005	Dynorod
£30 (expenditure agreed)	1 December 2005	Companies House

Total £3,301.47

- e) the costs incurred by the Respondent on the 2007 works were £15,010. They were incurred pursuant to a contract between the Respondent and the contractor. The Respondent had signed the contract on 13<sup>th</sup> August 2007 and the contractor signed it on 24<sup>th</sup> August 2007, which the tribunal takes as the contract date. The cost was payable in stage payments in accordance with a contract term which provided that one third of the cost would be payable on contract signature, one third “at a mutually agreed halfway point” and the remainder at the end of the project. The payments were in fact made as follows:

Payment	Date paid
£5,000	24 August 2007
£3,000	23 October 2007
£2,000	24 October 2007
£5,000	31 December 2007
£10	31 December 2007
Total: £15,010	

The importance of evidence

58. A tribunal deciding issues between the parties must reach its decision on the basis of the evidence that is before it at the hearing.
59. Although the tribunal has an inquisitorial function and, to that extent, will examine issues objectively, the tribunal cannot readily justify a decision as to reasonableness in a vacuum of evidence.
60. The expertise of a leasehold valuation tribunal is not aimed at reaching an independent, market place valuation of, for example, the cost of works but, instead, at testing expert evidence and applying knowledge and experience to the facts placed before it.
61. Neither party put forward any expert evidence at the hearing. Each relied to one extent or another on the Craig Report. The Respondent apparently considered inviting Mr Craig to assist its response to the application because it asked him to express views direct to the tribunal by his letter of 23<sup>rd</sup> August 2008.

General principles attaching to the standard of repairing obligations

62. It has never been the case that a repairing obligation carries with it a requirement of perfection. As Lord Esher M.R. said in *Proudfoot v Hart* [1890] 25 Q.B.D. 42 ‘the house need not be put into the same condition as when the tenant took it. It need not be put into perfect repair. It need only be put in such state of repair as renders it reasonably fit for the occupation of a reasonably minded tenant of a class who would be likely to take it.’ That case also gave the well known guidance that the required standard of repair is *such repair*

*as, having regard to the age character and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it.*

63. That was a case involving an obligation to keep in tenantable repair. The Respondent's obligation in this case is to keep in substantial repair and condition. It was held by His Honour Judge Rich in Commercial Union Life Assurance v Label Ink [2001] L.&T.R. 29 that *Although 'substantial' is not the same word as 'tenantable', I think it necessarily falls short of perfection.*
64. As a general rule, where there is more than one way of executing repairs, so long as adopting any option would put the premises into the covenanted condition, it is the person who has the repairing obligation, and not the person to whom the obligation is owed, who has the choice. Plough Investments Limited v Manchester City Council [1989] 1EGLR 244.
65. A test as to whether works carried out by a landlord and reimbursed by a tenant are reasonable is whether the landlord would have chosen that method of repair if he had to bear the cost himself. [*Plough Investments above*].
66. In Hyde Housing Association Limited v Williams [2000]LT, the Lands Tribunal determined that, when considering whether a repair is reasonable, as to cost or standard, there is no presumption either way. It is for the court or tribunal to decide on the whole of the evidence.

#### The 2005 redecoration

67. There was no evidence before the tribunal that external redecoration and associated repairs were unnecessary.
68. Nor was there any dispute between the parties about the cost of the 2005 redecoration. The Applicants accepted the tribunal's expressed opinion that the estimated sum of £23,750 was reasonable.
69. In the tribunal's opinion, the fact that the Respondent chose to implement a programme of works to the property in an order of priority which differed from the priorities recommended by the Craig Report, delivered some twelve months previously, does not, of itself, mean that costs spent on the work which the Respondent did implement were unreasonably incurred. The tribunal, therefore, does not accept the Applicants' submission on that issue.

#### The patchwork roof repairs and the 2005 works as a whole

70. The Craig Report had advised against patchwork roof repairs. However, the tribunal received no evidence directly from an expert witness, which it would have been able to test

and evaluate, about whether or not the Respondent's decision to implement temporary partial repair work was reasonable.

71. Having considered the Applicant's submissions, the tribunal's opinion is that it was, in all the circumstances, a reasonable choice:
- a) The tribunal considers that any failure by the Respondent to procure proper supervision of the 2005 works ultimately goes to the issue of whether the work was carried out to a reasonable standard, not whether the costs spent were reasonably incurred;
  - b) The Respondent was entitled to take into account pragmatic considerations such as cost, so long as the result of implementing the choice would achieve the required standard of repair and condition. Notwithstanding the opinion expressed in the Craig Report, there was no expert evidence before the tribunal that the scope of the patchwork roof repairs as actually carried out would not achieve that standard;
  - c) It is clear from the Respondent's submissions that it did not opt, as a once and for all choice, for the patchwork roof repairs instead of the whole scale roof replacement. The Respondent came to the conclusion that, whilst the 2005 redecoration scaffolding was in place, it would be sensible and, in terms of cost, realistic to do the patchwork roof repairs, in the belief (admittedly in the face of the Craig Report) that they would provide value for money by achieving some reasonable postponement of the total roof replacement; and
  - d) as the tribunal explained to the parties during the hearing, the fact that the contractual arrangements for the execution of the 2005 works did not require the contractor to warrant the quality of the workmanship (as the Applicants had explained in their submission, a warranty should have been given to the Respondent (not to third parties such as the tenants)) did not, in the tribunal's opinion, go to the issue of whether the cost of work was reasonably incurred. It would be an implied term of any such contract that the work would be done to a reasonable standard.
72. The only evidence which the tribunal received that the 2005 works had not been carried out to a reasonable standard was the Applicants' submission that the external repair work associated with the 2005 redecoration had been carried out badly, so as to cause water penetration through a window of the Applicants' flat. The Applicants produced photographic evidence of significant water damage and discolouration around the internal face of the window. The fact that there had been some damage is inescapable. But the tribunal received no evidence in support of the Applicants' contention that the damage was attributable to the 2005 works.
73. In the absence of expert evidence relating to the cost of the patchwork roof repairs, the tribunal considers there is no basis for determining a different cost.
74. Consequently, the tribunal determines that:
- a) the costs of the 2005 works were reasonably incurred and, not having received compelling evidence to the contrary, has no reason to determine that the 2005 works were not carried out to a reasonable standard; and

b) accordingly, the relevant costs of the 2005 works were £59,706.84.

The 2005 relevant costs other than in respect of the 2005 works

75. The Applicants requested the tribunal to consider their application under section 27A in the context of the whole of the relevant costs incurred in the 2005 service charge year. The Respondent did not object to that request. Apart from relevant costs incurred on the 2005 works, there is the expenditure of £3,301.47 specified in paragraph 57(d) above. Two of those items were, in any event, agreed between the parties as stated in that paragraph.
76. Even though the Applicants apparently knew of these costs only on 18<sup>th</sup> December 2008, on the penultimate day of the hearing, they made no submissions as to unreasonableness following the adjournment on that day.
77. The tribunal understands that the item of £141 (see paragraph 57(d)) related to the removal of some asbestos cement board sheets from part of the property. The invoice was addressed to Mr Madhloom and is marked in manuscript 'Approved for payment' and 'OAH Residents Association Ltd'. As the tribunal stated to the parties during the hearing, there is no service charge head of recovery in the Applicants' lease which clearly covers this expenditure. Clause (4)(g), which gets close but in the tribunal's opinion not close enough, refers to necessary or convenient costs to maintain the buildings as good quality residential flats. In the tribunal's opinion, sensible as the removal of these items may have been, the Respondent may not expect to recover the cost as a service charge without the relevant tenants' agreement, having regard to the scope of the service charge heads of recovery.
78. The Respondent stated that the item of £550 (see paragraph 57(d)) was incurred, without documentation, on the removal of a tree or a tree stump which was at risk of causing damage to a building on the property or was, otherwise, rendering maintenance of the building unsatisfactory. No submission was made that the tree was located on demised property. On that basis, the tribunal considers the work fell within the Respondent's maintenance obligations and that the cost was reasonably incurred.
79. Each of the other items of cost, which are not anyway agreed, appear to the tribunal to be unexceptional as service charge recovery items. The tribunal has no evidence that they were unreasonably incurred or that the works or services were not carried out to a reasonable standard.
80. Accordingly, reflecting the finding at paragraph 77 above, the tribunal determines that the costs referred to in paragraph 57(d) above comprise relevant costs of £3,160.47.

Section 27A determination in respect of the 2005 service charge year ended 25<sup>th</sup> December 2005

81. The tribunal determines that, subject to the determination at paragraph 98 below, a service charge would have been payable by the Applicants to the Respondent in respect of the service charge year ended 25<sup>th</sup> December 2005; and, subject as stated in paragraph 98, the amount of the service charge would have been £12,573.46, being one fifth of the relevant

costs incurred by the Respondent in respect of that year, totalling £62,867.31 and being the aggregate of the sums stated in paragraphs 74(b) and 80 above.

The 2007 works

82. Whilst it is an expert tribunal, the tribunal does not carry out, and has not carried out in this case, any form of detailed survey of the garage block or of the 2007 works. Nor was the tribunal presented with an expert report by either party. However, the tribunal accepts that, by 2007, the block was in need of repair.
83. The tribunal places only limited weight on the Craig Report. Mr Craig was unavailable to be questioned on the report which, in some respects, appears to be giving the advice, such as about demolition and rebuilding, which the client was, perhaps, asking to hear. Otherwise, the tribunal would have expected the Craig Report, for example, to give options for the garage block roof, as distinct from the advice about the pitched roof for storage. The tribunal notes the Craig Report does not suggest that the building is dangerous in any way or needs urgent health and safety repairs; but that it is the least urgent task, for 5-7 years time subject to circumstances.
84. Very little evidence was given to the tribunal about the specification or standard of work anticipated by the 2007 works other than that the contract was intended to be a temporary solution. The tribunal notes from photographic evidence that the brick soldier course over at least one of the doors had failed. The tribunal considers that there was a need to cure these dilapidations one way or another to avoid collapse and the potential risk of injury.
85. Given the need to repair the building, either by remedying particular dilapidations or by rebuilding, the expenditure already incurred on the 2005 works and the anticipated further expenditure on the property in due course, the tribunal considers that the Respondent's choice of the pure repair option was reasonable in all the circumstances. The principles drawn from Plough Investments (paragraphs 64 and 65 above) appear relevant in that context.
86. Taking the Respondent's obligation at clause (4)(d) of the lease to keep the main structure, external walls, foundations and roofs of the buildings in good and substantial repair and condition at its most objective, it is very difficult to say, in the tribunal's opinion, that the required repairing standard has not been met.
87. However, the tribunal considers that the appearance of the brickwork where it has been renewed to the front elevation following installation of lintels over the garage doors is not wholly satisfactory. The appearance is uneven with untidy pointing and is not to the same standard as the lower areas of the garage block or of the main house generally. The concern about appearance extends to the pointing between the mineral felt roof up stands and the coping stones which cap the garage walls to the front and sides.
88. Despite those concerns, the tribunal did not receive expert evidence about what could be done to improve appearance and at what cost. The tribunal has considered a possible



deduction from relevant costs but concluded it would be unsafe to make one in the absence of further evidence and in the context that any deduction would be difficult to arrive at and relatively small in amount.

89. In all the circumstances, therefore, the tribunal is unable to agree with the Applicants' submission that the 2007 works were worthless in the context of the Craig Report; and agrees with the Respondent that the works provided value for money.
90. Accordingly, the tribunal determines that the cost of the 2007 works was reasonably incurred and that, notwithstanding the concerns which the tribunal has expressed, the works were carried out to a reasonable standard having regard to their purpose.
91. That leaves the issue of quantifying the relevant costs for the purpose of determining service charge liability for the year ended 25<sup>th</sup> December 2007. On that issue, the tribunal determines as follows:
  - a) A misunderstanding about the responsibility under the lease for the garage doors has caused an error in the treatment of relevant costs and the service charge liability in the 2007 statement of service charges, other income and relevant costs. The tribunal anticipates that it will assist the parties to explain the issue as if the total costs of the 2007 works had been incurred during the 2007 service charge year. However, paragraphs (i) to (vii) below, whilst determining the position on the relevant costs overall, is subject to the tribunal's determination in paragraph (c) below.
    - i) The Respondent submitted that, in its opinion, its obligation at clause (4)(d)(i) of the lease, referring to 'main structure', includes the garage doors.
    - ii) However, the tribunal considers that the express reference in the Applicants' repairing obligation at clause (2)(g) to *keep ... all ... doors ... of and used exclusively in connection with the demised premises properly ... repaired* puts beyond doubt that the garage door is the Applicants' responsibility and that it is not, therefore, within the scope of clause (4)(d) or any other lease provision referred to in the third schedule to the lease.
    - iii) Having regard to the facts that the Applicants are contractually responsible for their garage door and that, in particular, the third schedule does not therefore extend to it, that it was represented to the tribunal that all leases are in substantially the same terms, and that Mr Madhloom has been credited with £1,000 for not having his garage door replaced as part of the 2007 works, it appears to the tribunal that no part of the costs associated with the garage doors are recoverable as a service charge, for the purposes of section 18 of the Landlord and Tenant Act 1985.
    - iv) On the evidence put to the tribunal, the reason why the actual 2007 costs were £990 less than the contractor's estimate of £16,000, is that the Applicants chose not to have their door renewed and the contractor, therefore, gave a credit on the overall account of £990. It appears from the presentation of the 2007 statement that this apportionment (for some reason, which is not clear, rounded up to £1,000) was applied to each door and to each tenant, even to the point of Mr Madhloom's liability being relieved of £1,000 because his garage is not located in the block.

The tribunal therefore concludes that the costs associated with the three doors which were renewed were £2,970 (3 x 990).

- v) Whatever the provisions of the other leases are, neither party asserted, and it would seem a most unlikely and wayward result, that the Applicants should be wholly responsible for their garage door (as the tribunal determines they are) and, as well, be responsible for a service charge contribution towards the others.
  - vi) Accordingly, the 2007 works relevant costs, for the purposes of the 1985 Act, are reduced from £15,010 by £2,970 to £12,040. The amount of £2,970, not being relevant costs recoverable through a service charge, are no doubt recoverable or have been recovered by the Respondent as an ordinary contractual debt from the tenants of flats 1, 4 and 5.
  - vii) In the context that the 2007 statement commences with a virtually equal opening balance for each tenant (differing only by a few pence), there is a straightforward accounting reconciliation which could, subject to paragraph (c) below, be made to correct the error:
    - (1) The note to the 2007 statement refers to flat 3 arrears of £2,200. On the evidence, it appears that £1,000 of that sum was wrongly referable to the garage door contribution.
    - (2) Consequently, the arrears stated in the note should be reduced to £1,200, which is consistent with the evidence that the Applicants have not paid their basic service charge advance payments calculated on the basis of £100 per month.
    - (3) When the adjusted arrears are reflected in the statement and if the £1,000 credit is adjusted to what is, on the evidence, the true credit of £990, the result is a closing balance of £364.66. That is the same closing balance which applies to the other tenants owning garages in the garage block.
- b) The tribunal has determined that the relevant costs incurred on the 2007 works were £12,040. Having regard to the tribunal's determination under paragraph 90 above, that amount does not fall to be limited under section 19 of the 1985 Act.
- c) However, the tribunal notes that:
- i) Clause (3)(a) of the lease requires payment of a service charge of 20% of the Respondent's '*actual costs expenses and outgoings mentioned in the third Schedule...*', clause (3)(a)(i) refers to the amount of the service charge and the tenants contribution to it (the draftsman appears to be referring to relevant costs as a service charge) being certified *once a year on 25<sup>th</sup> day of December in each year or as soon as possible thereafter commencing on 25<sup>th</sup> day of December 1995*, and clause (3)(a)(ii) provides for equal half yearly payments in advance of service charge instalments on 25<sup>th</sup> December and 24<sup>th</sup> June in each year. The third schedule refers to *All costs and expenses incurred by the Landlord ...*. In the tribunal's opinion the drafting, although not crystal clear, contemplates a service charge annual accounting period ending on 25<sup>th</sup> December.
  - ii) the Respondent clearly agrees with that opinion because its statements of relevant costs for 2005 and 2007 are expressly made up to that date.

- iii) however, on the evidence before the tribunal, the last two of the items of cost relevant to the 2007 works, together totalling £5,010, were paid by the Respondent on 31<sup>st</sup> December 2007. They had not been invoiced by the contractor until 27<sup>th</sup> December. They were not, therefore, “actual costs” (as per the language of the lease) as at 25<sup>th</sup> December 2007 and nor, in the tribunal’s opinion, were they costs and expenses ‘incurred’ for third schedule purposes as at that date. The contract for the 2007 works, completed on 24<sup>th</sup> August 2007, incurred the Respondent with a liability to pay the costs in due course; but the tribunal does not read the service charge provisions of the lease as entitling the Respondent to recover as service charge in respect of one accounting reference period expenditure which is not spent during it. The language of the lease refers to actual, not prospective, costs and expenses.
- iv) The contractor’s invoice dated 27<sup>th</sup> December 2007 treats the garage 3 door credit (expressed as an amount of £980 which, on the evidence including the invoice itself, is clearly an error for £990) as the last item reflected in the overall account, producing the balance then due of £5,010. It therefore appears reasonable to the tribunal to determine, as it does, that the payment of the component of £2,970 (not being relevant costs for service charge purposes as per paragraph (a) above) and the £990 credit accounting being an integral part of the payment of £5,010, were made on 31<sup>st</sup> December 2007.
- v) Accordingly the relevant costs, recoverable via the service charge, incurred in respect of the 2007 works and in respect of the service charge year ended 25<sup>th</sup> December 2007, which is the subject of the application before the tribunal, are the first three payments referred to in the table at paragraph 57(e) above, totalling £10,000. The remainder of the 2007 works relevant costs being £2,040 (£15,010 minus £10,000 minus £2,970 = £2,040) are referable to the 2008 service charge year.
- d) The Applicants had told the Respondent’s other directors by e-mail on 11<sup>th</sup> July 2007 that the Applicants conditionally agreed the principle that Flat 2 should not be required to upgrade the garage block roof. However that confirmation did not amount to an unequivocal agreement, and no evidence was put to the tribunal of any such agreement, justifying a 25% debit to the Applicants’ service charge account of the 2007 works roof improvement cost of £2,250. Consequently, the share of the improvement cost to be borne by the Applicants should be reduced from £562.50 to £450 i.e. 20% of the roof improvement component of relevant costs.

Section 27A determination in connection with the 2007 works’ relevant costs, in respect of the 2007 service charge year ended 25<sup>th</sup> December 2007

92. The tribunal determines that a service charge is payable, as at the date of this Decision, by the Applicants to the Respondent in connection with the 2007 works for the service charge year ended 25<sup>th</sup> December 2007; and that the amount of the service charge is £2,000, being one fifth of the relevant costs incurred by the Respondent on the 2007 works in respect of that year, totalling £10,000 and being the sum stated in paragraph 91(c)(v) above.

The relevance of Section 20B of the Landlord and Tenant Act 1985

93. Section 20B of the 1985 act provides:

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

94. Unlike, for example, section 20 of the 1985 Act, there is no provision for dispensation from the section 20B requirements, even where there has been prior consultation with the tenant under section 20.

95. It was held in *Gilje v Charlgrove Securities* [2004] 1 All ER 91 that the purpose of the section is to give warning of a bill for expenditure and to enable the tenant to set aside provision to meet it. It is essential that the section 20B(2) notice specifies the amount of the costs incurred, otherwise they will be irrecoverable (as held in *Westminster City Council v Hammond* [1995] LAG Bulletin, December, p.19, Central London County Court) and by the Lands Tribunal in *London Borough of Islington and Lucy Shehata Abdel-Malek* [LRX/90/2006]. It is not sufficient to rely upon the estimates contained in any section 20 notice or other consultation communication because those are estimated costs to be incurred rather than costs which have been incurred.

96. It was also held in *Gilje v Charlgrove Securities* (above), that section 20B does not apply to service charge payments made on account, where the ultimate expenditure does not exceed the aggregate payments on account. The section applies only to the excess of actual expenditure over payments on account of estimated future expenditure lawfully recovered under the relevant lease.

97. It appears to the tribunal, from the evidence before it, that the 2005 and 2007 statements (neither of which were certified) were produced to the Applicants for the first time during the hearing. The Applicants are not contractually liable under their lease to pay the balance of actual expenditure above the aggregate of payments on account until they have been provided with a year end service charge certificate: clause (3)(a)(ii) (the fact that clause (3)(a)(i) provides that the statement should be certified by the landlord's accountants only on the tenant's request is considered by the tribunal to be irrelevant). The papers submitted by the parties to the tribunal do not include any service charge demands to pay any such balance.

98. Consequently, on the evidence before it at the hearing of this case, the tribunal determines that:

- a) all of the relevant costs in respect of the 2005 service charge year year, ended 25<sup>th</sup> December 2005, were incurred, at the latest, by 1<sup>st</sup> December 2005: see paragraphs 57(c) and (d) above;
- b) no service charge demand in respect of those relevant costs appears to have been served in accordance with the requirements of the lease within 18 months of the items of relevant costs having been severally incurred;
- c) the papers submitted to the tribunal do not include any section 20B(2) notice, either expressed as such or, as would be satisfactory, any written communication amounting to such a notice even though not so expressed, in respect of any of the relevant costs; and
- d) accordingly, the Applicants are not liable to pay the service charge for 2005 of £12,573.46 which has been determined by the tribunal at paragraph 81 above, except to the extent the whole or any part of that amount was due for payment by the Applicants as payments in advance on account of anticipated future expenditure under clause (3)(a)(ii) of the lease and would have been available to the Respondent towards the relevant costs in question.

Other questions raised by the application under section 27A

99. Page 7 of the application (in respect of 2005) describes six questions and page 7 of the application (in respect of 2007) describes seven questions which the Applicants wish the tribunal to decide.

100. Although some of the questions are dealt with by this Decision, as the tribunal explained to the Applicants during the hearing, it has no jurisdiction to decide those questions which are not so dealt with. The tribunal also observes that clause (3)(a)(iii) of the lease allows for the Respondent to maintain a reserve fund (not a sinking fund) towards the payment of repairs to or replacement of the structure or exterior of the buildings or any part thereof. The tribunal received no clear evidence that reserve fund payments had been demanded or paid in respect of any specific part of any building.

**SECTION 20C**

101. The Respondent's costs in connection with this case may or may not be recoverable as service charges under the leases of the property. The tribunal has not considered the matter.

102. The tribunal considers that material time was spent during the hearing, both in adjournment and in the making of submissions, in direct consequence of the Respondent's failure to produce the 2005 and 2007 statements of relevant costs until required to do so by the tribunal.

103. The tribunal also considers that much time would have been saved and more detailed earlier understanding of relevant facts would have been achieved, both by the Applicants and the tribunal, had the Respondent provided the overall service charge statements, as records of financial accounting, pursuant to

Directions which were made by the tribunal on 17<sup>th</sup> June 2008; and that the Applicants were materially disadvantaged by the Respondent's failure to do so.

104. For that reason and having regard to the other circumstances reflected in this Decision, the tribunal considers that it is just and equitable that 75% of any costs incurred by the Respondent in connection with the proceedings before the tribunal are not to be regarded as relevant costs to be taken into account when determining the amount of any service charge payable by the Applicants. The tribunal so orders.

Dated 20th February 2009



.....  
C.H.Harrison (Chairman)

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Residential  
Property  
TRIBUNAL SERVICE**

**JURISDICTION**

Section 20ZA, Landlord and Tenant Act 1985

**DECISION**

Case Number	CHI/43UB/LIS/2008/0029 (20ZA)
Property	Old Avenue House, Old Avenue, Weybridge, Surrey KT13 0PS
Applicant (Landlord)	Old Avenue House Residents Association Limited
Respondents (Tenants)	Ijaz and Josephine Ahmad
Date of Inspection	19 <sup>th</sup> September 2008 (relating to the Respondents' application under section 27A)
Date of Hearing	17 <sup>th</sup> December 2008 at The HG Wells Centre, Church Street East, Woking Surrey
Date of Decision	17 <sup>th</sup> December 2008 (delivered orally) 20 <sup>th</sup> February 2009
Tribunal Members	C.H.Harrison (Chairman) N.I.Robinson FRICS Mrs J.E.S.Herrington

**BACKGROUND**

1. Ijaz and Josephine Ahmad, who are the Respondents in this case, are the owners of a 999 year lease of flat number 3 and a garage and garden ground at the property which is known as Old Avenue House, Old Avenue in Weybridge, Surrey. Their landlord, which is the Applicant in the case, is a company called Old Avenue Residents Association Limited.

2. It is common ground between the parties that the only members and shareholders of the Applicant company are the headleasees of each of five flats (and associated garages) comprised in the property. They are entitled to appoint directors of the Applicant’s board who currently are:

<u>Flat and garage number</u>	<u>Directors</u>	<u>Date of flat purchase</u>
1	Mrs Shirley Beckwith	February 2003
2	Mr Madhloom	June 1997
3	Mr Ahmad	January 2000
4	Mrs Timmins	January 2005
5	Mr Jones	August 2004

3. The tribunal understands that:  
a) Mrs Ahmad is also a member of the company by virtue of her co-ownership of Flat 3;  
b) each of the directors listed above are also shareholders by virtue of their flat ownership.  
All the flat owners reside there, except the Respondents who, now and at all material times involved in this case, reside in the United States of America.

4. The Respondents’ lease was made on 3<sup>rd</sup> May 1995 between (1) the Applicant and (2) Martin Piers Collard of whom the Respondents are successors in title. By clause (3)(a) of the lease, the Respondents are obliged to pay 20% of the Applicant’s actual costs and expenses incurred on matters described in the third schedule to the lease. It is also common ground between the parties that each of the other four leases of the remaining flats also reserves a 20% service charge.

5. Accordingly, the appropriate amount for the purposes of section 20, Landlord and Tenant Act 1985 is, with effect from 31<sup>st</sup> October 2003, £1,250.

6. It appears from the Respondents’ lease that the service charge accounting period is each year of the lease term ending 25<sup>th</sup> December.

7. During 2004, the Applicant commissioned a report from Mr Simon T.F.Craig, RIBA, Chartered Architect titled *Inspection & Proposals Report: essential maintenance & building works Old Avenue House, Weybridge, Surrey*. The report, dated May 2004, was referred to by both parties, during the course of the hearing, as the Craig Report. It is helpful to the background of this case to set out its opening three paragraphs:



- a) *This report follows inspections carried out by Simon T F Craig RIBA, Chartered Architect, between 16<sup>th</sup> and 31<sup>st</sup> March 2004 at the request of the current owners of the flats 1 to 5 acting through the OAH Residents Association Ltd on their behalf.*
  - b) *At the time of the inspections, all flats were occupied by their owners with the exception of flat no.4 which was empty, pending sale or re-letting by the owners. Flat No. 5 is in the process of being sold. The original building dates from the late Victorian/early Edwardian era, with conversion to flats in 1955 and further alterations and extensions between 1990 and 1995.*
  - c) *For background information this report takes into account Mr J Gould's (Flat No.3) documents of 17<sup>th</sup> January 2004 and 5<sup>th</sup> February 2004, together with AE Hughes & Sons (Contracts) Ltd's tender dated 9<sup>th</sup> December 2003 for "Roof Works" obtained by Mrs S Beckwith (Flat No.1). Various earlier reports and estimates for external decorations and repair works were referred to only as background information.*
8. The reference to Mr Gould in the opening paragraph c) of the Craig Report is explained, at any rate to some extent, in paragraph 21 below. Neither party referred the tribunal to the earlier reports referred to in that paragraph of the Craig Report.
9. On 12<sup>th</sup> June 2008, the Respondents applied to the leasehold valuation tribunal of the Southern Rent Assessment Panel, under section 27A, Landlord and Tenant Act 1985, for a determination of liability to pay certain service charges under their lease. That application related in part to the carrying out of works of redecoration and repairs to the exterior of Old Avenue House, commissioned and executed in 2005 (the 2005 works) , and works of repair to the property's garage block, commissioned and executed in 2007 (the 2007 works).
10. It was clear from the papers submitted to the tribunal in connection with that application (or from the written response to it made by the Applicant in this case) that:
- a) the redecoration (and a small amount of repair) element of the 2005 works had been the subject of two quotations:
    - i) one from The Very Reliable Company Ltd, addressed to Mrs Jones 5 Old Avenue House, dated 8<sup>th</sup> March 2005 for £28,000
    - ii) the other, which was accepted by the Applicant, from Anthony Luke, addressed to Mr Gould at Flat 3 Old Avenue House, dated 26<sup>th</sup> March 2005, for £23,750.
  - b) the 2005 works also included an invoice from Mr Luke dated 12<sup>th</sup> August 2005, addressed to Old Avenue House Residents Association, for £11,090. That invoice is headed "Invoice Re: additional works-scope agreed by Simon Craig".
  - c) according to the Respondents in this case, the 2005 works ultimately cost £46,340.
  - d) four estimates had been obtained in connection with the 2007 works, none on precisely the same specification as the others but each for broadly similar work, two of which were dated between May and June 2007 and the others undated, ranging between £9,600 and fractionally more than £26,000.

11. It was, in any event, common ground between the parties at the outset of the oral hearing of the section 27A application that the relevant costs incurred in respect of the 2005 works and, separately, the 2007 works far exceeded £1,250 in each case (see paragraph 5 above).
12. It was also clear to the tribunal, from the papers submitted to it in connection with the Respondents' application under section 27A that there was no evidence of the Applicant having complied with the consultation requirements of section 20, Landlord and Tenant Act 1985. That position was confirmed at the opening of the hearing of the Respondents' application on 19<sup>th</sup> September 2008.
13. Neither party was legally represented at that hearing. So far as the tribunal is aware, neither party and, particularly, the Applicant in this case had the benefit of legal advice before that hearing.
14. The tribunal considered it in the best interests of justice and expediency to afford the parties an opportunity of obtaining professional advice on the issues between them and the Applicant in this case an opportunity of considering making an application under section 20ZA of the 1985 Act, by no later than 12<sup>th</sup> November 2008. The Respondents' section 27A application was accordingly adjourned. The Applicant eventually submitted a section 20ZA application. It was, for some reason, undated but was received by the tribunal over seven weeks later, at the eleventh hour, on 11<sup>th</sup> November 2008.

## **RELEVANT LAW**

15. Section 20 of the 1985 Act applies, among other circumstances, to works to a building where the cost of the works exceed what section 20(3) describes as an 'appropriate amount'. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 provides that an appropriate amount under section 20(3) is one which results in the relevant contribution of service charges by any tenant towards the cost of the works being more than £250.
16. Where section 20 applies, the service charge contribution of any tenant towards the cost of the qualifying works (i.e. the works which causes the section to apply) is limited to £250 unless certain consultation requirements have either been complied with or dispensed with on an application, under section 20ZA of the 1985 Act, to a leasehold valuation tribunal: sections 20(1) and (7).
17. The consultation requirements, which are generally known as the section 20 consultation requirements, are set out in the Regulations referred to in paragraph 15 above.
18. Under section 20ZA (1) of the 1985 Act, an application may be made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements. The tribunal may make the determination if satisfied that it is reasonable to do so.

19. The Lands Tribunal has determined:

- a) The reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The most important consideration is likely to be the degree of prejudice that there would be (or, in the case of a retrospective application such as this, was) to the tenants in terms of their ability to respond to the consultation if the requirements were not met *Eltham Properties Limited v Mrs A Kenny and Others [LRX/161/2006]*
- b) The principal consideration on a retrospective dispensation must be whether any significant prejudice has been suffered by a tenant as a consequence of the landlord's failure to comply with the requirement or requirements in question. An omission may not prejudice a tenant if it is small, or if, through material made available in another context and the opportunity to comment on it, it is rendered insignificant. Whether significant prejudice has been caused needs to be considered in all the circumstances. *London Borough of Camden v The Leaseholders of 30-40 Grafton Way [LRX/185/2006]*

## **THE APPLICANT'S SUBMISSIONS**

20. The Applicant, initially, emphasised three principal points:

- a) The Respondents knew what was proposed for the 2005 works and the 2007 works and took part in some of the pre-works procedures conducted by the Applicant;
- b) On the 2005 works, all the flat owners, including the Respondents, knew that the repair works to the roof of Old Avenue House were long overdue. Costs escalated when the scaffolding, which was erected as a necessary part of the external redecoration work, could be used for the purposes of a closer inspection of the roof; and
- c) On the 2007 works, the Respondents effectively told the Applicant 'Go ahead'.

21. The Applicant further submitted in connection with the 2005 works:

- a) In July 2002, Mrs Ahmad had written to the Applicant's directors seeking an extraordinary general meeting of the Applicant's members and giving notice of an intended resolution that that her brother, John Gould, should be elected a director of the Applicant company to represent Flat 3. The tribunal did not receive any evidence that such a resolution was adopted; but the representation of Flat 3 by Mr Gould was asserted by the Applicant and not denied by the Respondents before the tribunal.
- b) The representation of Flat 3 by Mr Gould continued until 22<sup>nd</sup> February 2005. That submission was not disputed by the Respondents who, indeed, emphasised to the tribunal that such representation did continue up to but, expressly, not beyond that date.
- c) The Applicant had sought initial quotations from two contractors for the external redecoration works (but not for the roof repairs which, ultimately, were carried out as part of the 2005 works). Both quotations excluded the cost of scaffolding. All the residents, including the Respondents, knew that additional work would probably be necessary once further inspections were carried out following the erection of scaffolding.

- d) Before March 2005 Mr Gould, who was materially involved in the planning for the 2005 redecoration works, was representing the Respondents. Between March 2005 and the commencement of the 2005 works at the end of June of that year and during their continuation, the Respondents knew what was proposed and what was being done.
  - e) Mr Gould had carried out consultation with the residents concerning financial aspects of the proposals for the 2005 works. The Applicant referred to a letter which Mr Gould had written to Mr Madhloom as evidence of that submission. That letter, dated 2<sup>nd</sup> March 2005 (written significantly before the 2005 works were commenced and at a time when it was submitted to the tribunal that relations between Mr Gould and the Respondents were at a very low ebb) stated *I have provided the details of OAH's financial transactions to date – up to January 2005 ... to [Mrs Ahmad's] solicitors in Richmond on Thames and so the claim of being ... "not well informed of the proceedings" is incorrect.*
  - f) Mr Madhloom had been meticulous in providing the Respondents with information about the proposed 2005 works.
22. The Applicant also submitted in connection with the 2007 works:
- a) The Respondents knew about the proposals because they had expressed concern about them. The Applicant referred to:
    - i) an e-mailed letter from the Respondents to Mr Jones, Mrs Beckwith, Mr Madhloom and Mrs Timmins dated 26<sup>th</sup> June 2007 in which the Respondents wrote *However, if other residents are convinced that everyone's money will be well spent on a repair job, as proposed by H&G, we will go along with that.* The tribunal noted that the same letter went on to urge the Applicant, nevertheless, to give due consideration to various matters, one of which was the Respondents' suggestion that a further structural engineer's report should be obtained on the issues concerning the garage block; and
    - ii) the minutes of the Applicant's board meeting on the following day, 27<sup>th</sup> June 2007 recorded that the relevant directors rejected the Respondents' urged engineer's report proposal as an unnecessary expense.
  - b) The garage block needed work to be done to it urgently. All the residents knew that the garage block was dilapidated and they knew about the proposals for the 2007 works.

## **THE RESPONDENTS' SUBMISSIONS**

23. The Respondents submitted:
- a) They had never seen a contract for the external redecoration work carried out as part of the 2005 works.
  - b) They have seen nothing in the section 20ZA application which justifies a failure to consult.
  - c) They were not kept informed of material developments and have seen no evidence of proper consultation.

- d) The Applicant knew that Mr Gould's representation of the Respondents' interests had been withdrawn on 22<sup>nd</sup> February 2005.
24. The Respondents expressed their concern that Mr Anthony Luke, the selected contractor for the 2005 works, was known to and had some professional dealings with Mr Gould. Upon enquiry by the tribunal with the Respondents, there was no evidence of a connection between Mr Luke and the Applicant for the purposes of paragraph 11 of Part 2 of the 4<sup>th</sup> schedule to the Service Charges (Consultation Requirements) (England) Regulations 2003.
25. In response to a question from the Applicant, the Respondents submitted that their statement in an e-mail dated 4<sup>th</sup> June 2005 to the other residents, *We are heartened to hear that competitive bids were obtained for the painting work, and in selecting the contractor. The procedure was correctly followed.*, appeared, at the time, to be correct but that it subsequently became clear to them that the correct procedures had not been followed.
26. The Respondents stated they had no observations on the tribunal's disclosure to the parties that, having regard to its general knowledge and experience, the tribunal considered the quotation by the selected contractor of £23,750 for the external decoration work, being part of the ultimate 2005 works, was reasonable. Indeed, the Respondents stated that their real concern with the 2005 works was that, through lack of consultation, they were substantially ignorant of what actual work, additional to the external redecoration, had been done and at what cost.
27. In response to questions from the tribunal, the Respondents stated that they had not considered obtaining an alternative quotation for the 2005 redecoration works; and that they had not pursued an indication which they had made to Mr Jones on 5<sup>th</sup> November 2006 that, on receipt of final tender papers for the proposed 2007 works, they might be able to interest one or two builders to participate in the bidding process, because it was not realistic to do so in the context that the Respondents were residing abroad.
28. The Respondents stated, in response to the tribunal's question, that they had been prejudiced by the Applicant's failure to comply with the section 20 consultation requirements in the following ways:
- a) Their service charge liability would have been relatively cheaper if the whole of the roof repair work had been carried out, as they put it, 'it one go', instead of being carried out only in part. The Respondents consider the Craig Report supports that submission.
  - b) In particular, the Respondents referred the tribunal to paragraph 3.02(e) of the Craig Report which stated in part *It is my opinion that further patching up [of the roof coverings] would potentially cause more damage to the tiling and be a waste of money. A full and proper job of renewal and repair of all component parts must be carried out, as soon as funds can be made available to cover the costs, within the next 1 to 3 years. ... All refurbishment and redecoration at this level should be carried out at the same time as general roof works.*

- c) The Respondents have been prejudiced by the Applicant's failure to procure and manage the 2005 and the 2007 works properly, caused by what the Respondents described as the appalling state of affairs in the company.
29. The tribunal asked the Respondents whether they had suffered any other prejudice as a result of the Applicant's failure to comply with the section 20 consultation requirements. The Respondents confirmed they had not.

#### **MATTERS DETERMINED BY THE TRIBUNAL**

30. The tribunal determines the following matters of fact relating to the 2005 works:
- a) Mr John Gould was involved to a material extent in the initial investigations into the need, and proposals, for works to Old Avenue House some of which were ultimately comprised in the 2005 works.
  - b) Mr John Gould represented the Respondents up to but not beyond 22<sup>nd</sup> February 2005.
  - c) In March 2005, the Applicant obtained two quotations for the cost of the external redecoration work comprised in the 2005 works.
  - d) In April 2005, the Respondents were, with others, consulted by Mr Madhloom about the proposed tender documentation relating to the then proposed external redecoration works comprised in the 2005 works.
  - e) In May 2005, Mr Jones sent Mrs Ahmad particulars of the cost of the 2005 works as then anticipated, coupled with basic funding proposals, and was invited to comment on them.
  - f) At some date before 1<sup>st</sup> June 2005, the Respondents expressed certain observations and proposals concerning the then intended work to Mr Madhloom.
  - g) The Applicants had an opportunity to, but did not, seek alternative cost quotations.
  - h) During the course of June 2005 there was correspondence between the Respondents and certain directors of the Applicant expressing opinions about the scope and cost of work which included some of the work ultimately comprised in the 2005 works. Such correspondence included the communication of the minutes of the Applicant's board meeting on 20<sup>th</sup> June 2005, which had not been attended by the Respondents, concerning the proposed scope of work and the communication of the Respondents' observations on the minutes to the other board members on 24<sup>th</sup> June 2005.
  - i) The 2005 works were commenced towards the end of June 2005.
  - j) During the course of the 2005 works in progress, and following the erection of scaffolding for their purposes, there were proposals for patchwork repairs to the roof of Old Avenue House. There was correspondence between members of the Applicant, including the Respondents, in which conflicting opinions were expressed concerning the scope of work then proposed.
  - k) The proposed increase in scope of the 2005 works from, essentially, external redecoration and minor repairs to include patchwork repairs to the roof was within the knowledge of the Respondents who made adverse observations on the proposal.
31. The tribunal determines the following matters of fact concerning the 2007 works:
- a) The Respondents were aware of, and made numerous observations to the Applicant or members of its board on, the varying anticipated scope of works to the garage block

from February 2006 at the latest until September 2007, when the 2007 works were in progress.

- b) The Applicant or members of its board obtained, in or about May and June 2007, estimates from four contractors, each quoting, on matters of detail, for differing scopes of work but, on broad substance, for similar proposals.
- c) Three of those estimates were provided to the Respondents who made observations on them to the other directors of the Applicant in June 2007.
- d) In June 2007, the Respondents told the other directors of the Applicant that the Respondents had asked a contractor for a written quotation for a more extensive scope of work to the garage block.

32. The tribunal determines the following further matters of fact in relation to each of the 2005 works and the 2007 works:

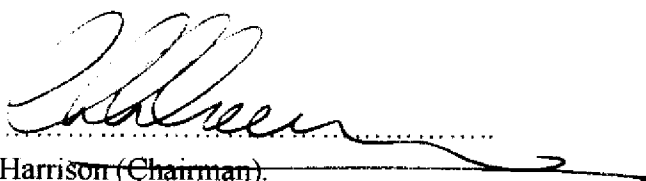
- a) the Applicant failed to comply with the section 20 consultation requirements as such.
- b) despite the commonly held view between the parties that repair work had been neglected, there was no material degree of, or any, real urgency surrounding the execution of the works which would or might justify a failure to conduct any consultation between the Applicant and its tenants.

33. In the tribunal's opinion, despite the Respondents' residence abroad for material periods during the procurement of the 2005 works and the 2007 works, they (or, until 22<sup>nd</sup> February 2005, in connection with the 2005 works, their appointed representative) were substantially aware of the Applicant's proposals for the 2005 works and the 2007 works. The fundamental position was that the Respondents knew what was proposed but disagreed with the proposals. Notwithstanding that some of the timescales involved periods of awareness by the Respondents which were much shorter than the periods which would have applied under the section 20 consultation requirements, the Respondents communicated their concerns about the various proposals to the Applicant or its directors.

34. Having regard to the submissions made by the parties and to the evidence which they adduced, including the evidence concerning the degree of consultation which did take place and the extent of the Respondents' observations made to the Applicant, the tribunal determines, in respect of the 2005 works and the 2007 works, that:

- a) the Respondents did not suffer significant prejudice as a consequence of the Applicant's failure to comply with the section 20 consultation requirements; and
- b) in all the circumstances, it is reasonable to dispense with those consultation requirements.

Dated 20<sup>th</sup> February 2009 (paragraph 34 having been delivered orally on 17<sup>th</sup> December 2008)

  
.....  
C.H.Harrison (Chairman).