

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



**Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges**

DECISION AND REASONS

Case Number: CHI/00HN/LSC/2010/0007

Property: Valcourt, 18 Branksome Wood Road,
Bournemouth, Dorset, BH4 9JY

Applicant: A Lambert Flat Management Ltd

Respondents: Mrs A Green & other. Leaseholders of
Valcourt

Date of Application: 8 January 2010

Date of Hearing: 6 April 2010

Tribunal Members: Mr T E Dickinson BSc FRICS (Chair)
Miss R B E Bray BSc MRICS
Mr J Mills

Date of Decision: 19 April 2010

SUMMARY OF DECISION

1. For the reasons set out in detail below the Tribunal decided that an overall figure of up to £41,700 (Forty one thousand seven hundred pounds) as presented in the 2010 Budget would be reasonable to incur on the works as specified, on the assumption that both the provisional sum and contingency sum were fully expended.

INSPECTION

2. Prior to the Hearing, the Tribunal accompanied by its clerk, inspected the exterior of the block, the common parts and the interiors of Flats 9 and 11 on the second floor. The Applicant was represented by Mr David Jenkins MRICS and Ms Emily Shepcar of A Lambert Flat Management

Ltd. Also present were Mrs Anthea Green, Secretary to the Valcourt Leaseholders Association and Mr David Christopher who was representing the Respondents.

3. The property, a 3 storey purpose built block of 12 residential flats, is understood to have been originally built in the 1960s and is situated to the south side of Branksome Wood Road about ½ mile from Bournemouth town centre. The property is constructed principally of cavity brick and blockwork walling with face brickwork elevations and has a flat roof of suspended joist construction with decking and layers of bituminous feltwork topped with mineral chippings.
4. The property faces North and occupies a site which slopes from North to South. To the front Northern side is a garden area and an in out driveway with further driveways leading to the block of garages to the rear Southern side beyond which is a back garden area.
5. The Tribunal were able to inspect the common parts of the building and no damp staining was found to be evident at the time of inspection to the wall and ceiling surfaces to the second floor landing areas, although minor cracks were noted to some of the ceiling surfaces.
6. The Tribunal were also able to inspect the interior of Flat 9 being situated on the North Eastern side of the second floor. No damp staining to the interior of this Flat was noted at the time of inspection.
7. An inspection was also conducted of Flat 11 situated to the rear South western side of the second floor. Areas of damp penetration were noted to the ceiling in the Entrance Hallway, the Bedroom and the West side of the Hallway and in the Living Room.
8. Arrangements had been made by the Applicants for the roof hatch above the second floor landing to be lifted and ladder access was made available to the Tribunal members in order to inspect the felted roof coverings. On inspection, it was noted that the felt roofs had been patched in three places principally to the central Western side above

Flat 11 and some patchwork had also been undertaken to the roof perimeters. There were noticeable splits to the felt work on the verges to the Northside with evidence of perforation and brittleness. The Tribunal members also noted that the protective layer of spar chippings was wearing rather thin in places and some gutter sections were significantly choked by both chippings and moss growth.

BACKGROUND

9. Directions were issued on 11 January 2010, the target date for the hearing being Thursday 8 April 2010. At paragraph 4 of the Directions it was stated that 'unless either party has asked for a pre-trial review hearing by 29 January 2010, the matter will be heard on 8 April 2010, or as near to that date as can be conveniently arranged with a view to deciding it.'

THE LAW

10. The Tribunal's jurisdiction is contained in section 27A of the Act. Section 27A is set out below:

S27A Landlord and Tenant Act 1985

Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

HEARING

11. The Chairman welcomed the parties and introduced the Members of the Tribunal. The following persons were in attendance at the Hearing:

Mr David Jenkins MRICS

A Lambert Flat Management Ltd

Ms Emily Shepcar

Representing the Applicant.

Mr Stuart Chessell MRICS of Curtis Pope Associates
Expert Surveyor for the Applicant.

Mrs Anthea Green, Secretary to the Valcourt Leaseholders Association

Mr David Christopher Representing the Respondents

Mr Jay Smith Operations Director of CEFIL

Ms Laura James Sales Manager for CEFIL

Mrs Nora Fountain Flat 1 Valcourt

Mrs Patricia Hammond Flat 4 Valcourt

Miss Catherine Meyrick Flat 5 Valcourt

12. The Chairman explained the procedure for the Tribunal hearing which commenced at approximately 11am at The Royal Bath Hotel, Bournemouth.

APPLICANT'S CASE

13. Mr Jenkins stated that since the beginning of 2009, patch repairs had had to be carried out on three occasions following roof leaks.
14. Mr Jenkins introduced the Applicant's expert witness, Mr Stuart Chessell MRICS of Curtis Pope Associates who had provided a roof condition report dated 4 February 2010 which was included as part of the Applicant's statement of case. Mr Chessell confirmed that the effects of Ultra Violet light had led to a degradation of the felt with the fibre glass reinforcement now visible and the felt showing signs of both perforation and brittleness. The roof edges had failed and due to the failure of the verges, timber work had been exposed in places.
15. In Mr Chessell's professional opinion, the roof required to be recovered and in this location was best suited to built up layers of bituminous feltwork. This, in his opinion, would provide good resistance to mechanical damage together with resistance to surface algae. In preparing a specification, Mr Chessell had paid due regard to the exposed location, susceptibility to strong winds and the proximity of tall trees.

16. In Mr Chessell's opinion the best option for both the Applicant and Lessees would be for building surveyor such as Curtis Pope Associates to oversee the entire project as one would need to consider health and safety factors, welfare and general supervision of the appointed contractors. In Mr Chessell's opinion this could become a notifiable project under the CDM regulations (which apply whether the project is notifiable or not) and an application would be required for Building Regulations approval.
17. Under the supervision of Curtis Pope Associates, payments would only be made on the basis of value of work completed on a stage basis. Mr Chesell stated that he would not favour paying a large advance deposit to a contractor.
18. Mr Jenkins, for the Applicant, stressed the need for a full investigation for the underlying timber decking and in the budget for the 2010/2011 year the sum of £41,700 had been budgeted for roof repairs to include provisional and contingency sums. Mr Jenkins went on to explain that the Applicants were seeking a determination from the Tribunal as to the reasonableness of these budgeted charges.
19. With regard to the costs incurred by the Applicant for the survey fees of Curtis Pope Associates, Mr Jenkins explained to the Tribunal that a payment has been made on account for services undertaken to date. The Applicant was not committed to any capital expenditure and in Mr Jenkins' view, the cost of the surveyor's fees to date had not exceeded the Section 20 limit for notification purposes.
20. When questioned concerning the quotations received Mr Chessell stated that he thought the original round of quotes were reasonable. In Mr Chessell's opinion the 'Icopal' product was better and that there would be a better back up in the UK having regard to the solidity of the manufacturers. 'Soprema' was however not a bad product in itself.

21. When questioned on the subject of single ply membranes, Mr Chessell confirmed that he had used Cefil before. He was well aware of the product and considered that it was 'up there' with the leaders in the industry. Mr Chessell however cited problems that could occur with localised surface ponding and algae growth. Mr Chessell thought that rainwater blown off the roof could easily oversail perimeter guttering. He additionally cited potential problems associated with wind noise and the proximity of trees and thought that in this location a three layer felt roof would be more preferable. The feltwork would, in his opinion, be more resistant to ageing and the effects of Ultra Violet light.
22. When questioned on the subject of Icopal versus Soprema, Mr Chessell stated that Icopal was indeed a long established product and in his opinion Icopal were slightly more robust with their presence in the UK than Soprema.
23. When questioned on the subject of decay to the underlying decking, Mr Chessell confirmed that there was certainly evidence of decay around the perimeters of the roof but he could not be certain about decay to the decking in the other areas without detailed checks and taking samples.
24. When questioned on the subject of Curtis Pope's costs, Mr Jenkins stated that he thought that the fees charged were competitive and no VAT had been levied. The Applicant had used Curtis Pope on other projects and although not local, Curtis Pope were in the Bournemouth area on a regular basis.
25. When asked why he could not undertake the survey personally, Mr Jenkins explained that he was a General Practice Chartered Valuation Surveyor and that the Applicant had no qualified building surveyors in house. In Mr Jenkins' view, the Applicant had certainly not breached Section 20 requirements. Without engaging a Chartered Building Surveyor, they wouldn't have been in a position to obtain tenders and thus rather a "Catch 22" situation had arisen. In the absence of obtaining a detailed survey on the roof, the Applicant would not have

known what works were required. Furthermore, no commitment would have been made by the Applicant until a contract had been signed with an appointed contractor.

26. With regard to the Construction (Design and Management) Regulations 2007, Mr Chessell was of the opinion that this project was on the "cusp" of notification to the Health and Safety Executive as with the three layer felt roof and scaffold, the project could be likely to extend to six weeks and this would automatically trigger a notification.
27. When questioned on the subject of supervision, Mr Chessell was of the opinion that there were certainly risks for not having the project properly supervised. One would need to consider JCT contract terms, minimum standards of insurance for contractors, the process for payment and retention and two inspections per week were envisaged.
28. When questioned on the subject of costs of supervision, Mr Jenkins stated that he thought that 10% of the contract price (no VAT) was indeed reasonable. The management had recently been involved with two local firms of surveyors overseeing projects, one at 13% plus VAT of the net contract cost and another at 11.5% plus VAT. With regard to the contingency sum and provisional sum, Mr Jenkins was of the opinion that there should be some degree of flexibility in order to allow for add on costs. Taking into account Hardie's lowest quote plus VAT, supervision fees and management fees the total project cost was approximately £41,700.
29. When questioned on the subject of the Applicant's fees for the works Mr Jenkins stated that whilst there was no management contract in place in the case of the subject property, it would be normal for agents to add on fees for major works and based on his own experience the sum of £900 would not be unreasonable. The Applicant's additional duties would include the appointment of a building surveyor, consideration of the building surveyor's report and recommendations, complying with the statutory process in the service of Section 20 notices, dealing with comments received from lessees, working with the

Building Surveyor on the specification and tenders and arranging for the appointment of a contractor. Subsequent work would include liaison on site, obtaining funding, attending a pre-contract meeting, arranging for stage payments and finally dealing with the guarantee.

RESPONDENT'S CASE

30. Mr Christopher, spokesman for the Respondents, stated that everybody agreed with the need for the roof covering to be replaced, but the leaseholders had queried the choice of product and indeed the need for the project to be overseen.
31. In Mr Christopher's view, the cost of overseeing the project at 10% of the contract price was unreasonable.
32. Mr Christopher stated that he has spoken with Hardie roofing contractors who had informed him that they thought the project could be completed in no more than 5 weeks and he therefore questioned whether or not this was a notifiable project under the CDM regulations.
33. Mr Christopher stated that with regard to the costs of re-roofing generally, no discussions had been held between the Applicant and leaseholders as to how the project would be funded, and he observed that there was indeed quite a saving between the first and second round of quotes. Using Cefil, the leaseholder's quotation amounted to £32,024 including VAT in total.
34. With regard to the Hardie quotation, Mr Christopher stated that a sum of £900 had been included for welfare facilities, but in Mr Christopher's view these should not cost no more than £100.
35. With regard to the Applicant's fees of £900 for administration with regard to the works, these were considered to be unreasonable, and in Mr Christopher's view these amounted to double counting.

36. With regard to alleged breaches of Section 20, Mr Christopher stated that the previous accounts were 9 months late, but no explanation had been provided by the Applicant. All the leaseholders wanted was replacement of the roof covering at a reasonable price.
37. Mr Christopher introduced Jay Smith, Operations Director for Cefil UK Ltd Synthetic Membranes, and also Laura James, Cefil's sales manager.
38. Mr Smith explained that he had not inspected the present roof covering but went on to explain that Cefil were the market leaders in the provision of PVC single ply membrane roof coverings. The PVC 1.5mm thick membrane was quite durable and a sample was provided for the members of the Tribunal to examine. With regard the comments on the proximity of trees/debris, this in Mr Smith's view could be detrimental to any felt roof covering. In Mr Smith's view, ponding of rainwater would occur with any system. Whilst the covering would be applied with a minimum 1 degree fall, one wouldn't overcome the problem of certain areas of pooling.
39. With regard to wind noise, Mr Smith stated that there was an advantage with the Cefil product with mechanical fastenings at the perimeters of the roof.
40. Whilst the Cefil product had been available in the UK for 10 years, it had been used for longer in Europe up to a period of 30 years and an application had been made to the British Board of Agrément for a new certificate guaranteeing the life of the system for 30 years.
41. With regard to the decking, Mr Smith said that his biggest recommendation would be for an inspection of the decking in at least two areas in order to establish the condition of the underlying decking and to also identify the thickness of the deck as a U Value of 0.25 would need to be achieved on this refurbishment.
42. Ms James explained to the Tribunal details of the warranty that would be provided by Cefil UK Ltd. A 20 year insurance backed warranty

would be issued upon completion of the project with a warranty for consequential loss should materials fail. Ms James explained that she had previously worked for Soprema and the warranty offered by Cefil was exactly the same. Whilst the Cefil product had been used in the UK for about 10 years, Cefil UK Ltd had operated as a separate entity for just over 2 years as a stand alone company. Each project is self monitored by the appointed contractor and Cefil would issue the Warranty. That warranty was insurance backed and also backed by the parent company who had over 30 years experience utilising the product throughout Europe.

43. Mr Christopher stated on behalf of the Respondents that he considered the warranty to be OK and the Cefil project to be more affordable. He queried the appointment of a building surveyor as the roofing contractor approved by Cefil would monitor the project. He also queried the need for the payment of additional fees of £900 to the Applicant.
44. Mr Christopher stated that Mrs Green, leaseholder of Flat 9, had owned the Flat since December 1989 and apparently the existing roof covering had been recovered just before Mrs Green's purchase. When questioned on the subject of additional fees of £900 charged by the Applicant, Mr Christopher stated that those costs were too high and in his view should be reduced to £25 per flat or £300 in all.
45. With regard to the fees charged by the Applicant for routine management, Mr Christopher stated that he had discovered that Ms Shepcar was not qualified and that the leaseholders were paying too high a rate at £199 with no VAT per apartment per annum. He had spoken to other managing agents who had all quoted lower figures. When questioned about whether the other agents had viewed the block, Mr Christopher stated that Robert Palmer had had a look and Rebbecks knew the block anyway. Mr Christopher was unable to provide evidence as to a specification of duties that these other managing agents would carry out for the management fees quoted. The other firms quoting didn't say anything about additional fees for administration of major repairs but neither did Mr Christopher ask them. Finally, Mr Christopher

stated that he didn't ask about professional qualifications whilst seeking alternative quotes for the management of the building.

46. When asked about the quotation for the roof repairs he had obtained from De Havilland Developments, Mr Christopher explained that the leaseholders wanted to see what else was available. De Havilland had been a name given to him by a solicitor; he had given De Havilland the specification drawn up by Curtis Pope for the roof repairs; and he was not aware of the experience, financial background or qualifications of this company. De Havilland would use a roofing sub-contractor to carry out the works; he believed but could not be certain that this sub-contractor was Hardie roofing who had quoted also to the Applicant. He did accept that the new quote had not been put through any Section 20 procedure, but was hoping that this could be undertaken shortly after setting up the proposed Right to Manage Company.

APPLICANT'S SUMMING UP

47. Mr Jenkins stated that A Lambert Flat Management Ltd had a contractual obligation with regard to the re-roofing project and in his view the Applicant's fees were both reasonable and required. On a project of this type, Mr Jenkins concluded that it would be prudent to allow for a contingency sum and additionally to have the project professionally overseen. Mr Chessell's specification was far more detailed but the cost of the proposed Cefil project was very similar to the cost of providing a three layer felt roof which could be more advantageous in this location.

FINDINGS OF FACT

48. Temporary repairs have been undertaken to the existing roof covering over recent years, and since 2009 patch repairs have been completed on three occasions. Both parties were in agreement that this block of flats now requires re-roofing.

49. The Applicant's expert stated that the roof edges have failed and the feltwork has been affected by Ultra Violet light which has made it brittle. Felt joints had failed, rainwater had entered the roof between the layers of felt and the verges had failed exposing timber work in places. Additionally repairs undertaken were beginning to fail and consequently it was recommended that the entire roof covering should be replaced in the short term. This was not challenged by the Respondent.
50. Under the Construction (Design and Management) Regulations 2007, a project becomes a notifiable project if the duration exceeds 6 weeks.
51. In respect of 'relevant works' costs incurred for professional fees in the sum of £1250, these took the form of an initial report and specification and because charged separately do not constitute relevant works within the meaning of Section 20.
52. In respect of the Section 20 notice procedures for the proposed re-roofing work, comments were made on the costs of the works, but the main challenges related to the level of professional fees and the late preparation of the 2008 accounts and these are not matters relating to Section 20 consultation procedures. The Tribunal found that the correct Section 20 notices had been issued for the works.
53. The figure presented by the Applicant as a total figure for the proposed three layer felt roof is approximately £41,630 to include Hardie's lowest quote of £31,945 plus VAT, professional fees at 10% of the net project value plus additional management costs of £900 (no VAT).
54. The Hardie's quote includes a contingency sum of £2500 plus VAT and a provisional sum of £2000 plus VAT.
55. The Hardie's quote includes the Building Regulations application fee stated by Mr Jenkins for the Applicant to be approximately £400.

56. The total cost of the Cefil option has been confirmed at a figure of £32,024 inclusive of VAT with a 'few pence' per sq m more for the fully bonded system.
57. As the lowest price felted roof option includes the cost of the Building Regulations application, there is therefore virtually no difference between the two quotes apart from professional fees for supervision and management.

DECISION

58. As both figures provided are indeed very similar on the 'base costs' of the works, this Tribunal finds that the 'base costs' of the proposed works would be reasonably incurred.
59. The condition of the underlying decking has not been fully investigated. In fact the contractors for Cefil have stated in their report that one area has been investigated, but Mr Smith, Operations Director for Cefil, suggested at the hearing that 2/3 areas should be opened up for examination. It would be reasonable for a project of this magnitude to allow for a provisional sum of £2000 plus VAT and a contingency sum of £2500 plus VAT. This might circumvent going all through the whole Section 20 process again if additional items were found.
60. In respect of professional fees for supervision, this Tribunal finds that it would be reasonable to levy fees at a rate of 10% of the project costs; indeed the Applicants have cited evidence of rates of 13% and 11.5% plus VAT respectively. We took evidence from the Applicant's expert that he would propose to undertake twice weekly inspections and together with involvement both at the beginning and conclusion of the project, it is considered that that percentage would be reasonable.
61. With regard to additional managing agent's fees of £900, Mr Jenkins stated at the hearing that these related to a number of items not forming part of the day to day management of the block. The Tribunal

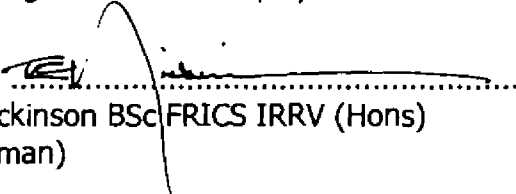
finds that it would be normal for a managing agent in these circumstances to charge additional costs and finds that these would not be unreasonably incurred.

62. In summary, this Tribunal considers that an overall figure of up to £41,700, as presented in the Budget, would be reasonably incurred in the re-roofing of the block on the assumption that both the provisional sum and contingency sum were fully expended.
63. With regard to other issues, the Tribunal have noted the Respondent's concerns about the late preparation of accounts but this matter does not form part of the subject application.
64. With regard to the fees for routine management of £199 plus VAT per Flat, the Respondents have provided no precise detail as to the specification which might be included in the terms of engagement of an appointed managing agent. Using the Tribunal's own knowledge and experience, the current sums payable are thought to be towards the top of the local range of fees payable, but not outside unreasonable parameters in relation to smaller blocks of residential flats.

Section 20C Landlord and Tenant Act 1985

65. The Applicants confirmed at the hearing that no charges would be levied in respect of costs incurred for the preparation of documents and attending the Tribunal hearing. This Tribunal thus makes an Order that no such charges should be payable.

Signed


T E Dickinson BSc FRICS IRRV (Hons)
(Chairman)

A Member of the Leasehold Valuation Tribunal appointed by the
Lord Chancellor

Dated 19 April 2010

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SOUTHERN RENT ASSESSMENT PANEL
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Miss R B E Bray BSc MRICS
Mr J Mills

Date of Decision: 19 April 2010

Date of Application for permission to appeal: 11 May 2010

PERMISSION TO APPEAL

1. For the reasons set out below the Tribunal refuses permission for leave to appeal to the Lands Tribunal.
2. Item 28 - In relation to the fees for Mr Chessell of Curtis Pope Associates, this section of the decision deals only with costs of supervision and not the managing agent's fees. The managing agent's routine fees were not part of the Application as the Application dealt with the costs of major works. On this specific point, however, relating

to the costs of supervision, the Tribunal took into account the evidence submitted by Mr David Jenkins MRICS and also of Mr Stuart Chessell MRICS. Based on its own knowledge and experience the Tribunal decided that the percentage sum of 10% of the contract price was reasonable.

3. Item 29 - In regard to the fees of the managing agent for administering the Section 20 works, the Tribunal accepted that managing agents would charge their own fees for Section 20 works in addition to those of a retained chartered Building Surveyor and based on the evidence of Mr Jenkins as set out in paragraph 29 thought that the sum of £900 was reasonable.
4. Item 34 - Welfare facilities. The cost is in priced tenders from more than one party and the Tribunal accepted these as being reasonable.
5. Item 63 – The two extracts quoted by the Respondents on page 2 of the letter of 11th May are not from S20 of the Landlord and Tenant Act 1985 and so cannot be evidence of breaches of S20. The first extract relates to summaries of rights required with demands for service charges and is from S21B of the 1985 Act. The second is from a proposed amendment to S21 and the requirement for timely regular statements of account for service charges; the proposed amendment is in S152 of the Commonhold and Leasehold Reform Act 2002 and has not yet been commenced.
6. In relation to alleged breaches of Section 20, the Respondent has made claims that there were Section 20 breaches which the Tribunal considered. The Tribunal also examined the notices served provided in evidence and decided at paragraph 52 of the decision that there were no breaches.
7. Item 65 – the Tribunal’s order only relates to the costs of that Tribunal as set out in paragraph 65 of the decision. The costs of opening the hatch to allow an inspection were not costs the Tribunal were asked to consider.

8. In relation to the comments in the last paragraph of Mrs Anthea Green's letter of 11th May 2010, the Landlord's surveyor Mr Chessell obtained quotations for two systems, Soprema and Icopal, both were disclosed in the Landlord's papers to the Tribunal. The Landlord's surveyor was questioned concerning the quotations received (see Sections 20, 21 and 22 of the decision). The Tribunal also specifically requested the Landlord's surveyor's opinion on the Cefil product.

9. The Tribunal's conclusion therefore is that there are no substantive grounds for appeal as set out in the Respondent's letter of 11 May 2010 which have any merit.

Signed


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T E Dickinson BSc FRICS IRRV (Hons)
(Chairman)

A Member of the Leasehold Valuation Tribunal appointed by the
Lord Chancellor

Dated 19 May 2010