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London Leasehold Valuation Tribunal File Ref No. **LON/OOAJ/LSC/2009/0807**

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 section 27A

Address of Premises	**The Committee members were**
Flats 1 to 48 Southall Court,	Mr Adrian Jack
Lady Margaret Road,	Mr Colin White FRICS
Southall Middx UB1 2RG	Mrs Rosemary Turner JP

The Landlord: **Southall Court (Residents) Ltd**

The Tenant: **The leaseholders of Flats 1 to 48**

Procedural

1. By an application dated 10th December 2009 the landlord sought determination that a contribution in 2009-10 towards intended major works to the roof and stairways totalling £83,885.00 plus VAT (£2,053.43 per flat) was reasonable and recoverable. The service charge year runs from 24th June.

2. The Tribunal inspected the property on the morning of 29th April 2010. This was followed by a hearing at Alfred Place WC1. The landlord was represented by Mr Peter Ward, acting (as we shall find) as director of the company, who called Mr Alick Lawrence BSc (Hons) (Building Surveying) MRICS. Of the tenants, Mr R Guraya of Flat 4, Mr R Makwana of Flat 33, Mr A Tinwari (assisted by his brother) of Flats 9 and 10 and Mr A Dhillon of Flat 11A appeared.

Company law matters

3. At the outset of the hearing Mr Guraya disputed Mr Ward's entitlement to represent the landlord. If, Mr Guraya said, Mr Ward was not validly appointed as a director, then he had no right to present the current application in the company's name, so that the application was not validly brought.

4. There are undoubtedly some oddities about the landlord company and its constitution. We were shown its memorandum and articles. The company appears originally to have been set up with a view to each of the 48 long leaseholders being a shareholder and there are provisions to give effect to that. By article 11 of the articles the "lessee of each flat shall be entitled to be appointed as a director."

5. In fact, however, Mr Ward is now the owner of some seventeen shares in the company, which gives a de facto controlling interest, because various shareholders have disappeared. No general meeting of the company has been held for at least three years

(Mr Ward says, because Mr Guraya's disruptive behaviour made the holding of meetings impossible). Mr Ward says he and a Mr De La Haye are properly appointed directors of the company and Mr Guraya is not.

6. All of this might give rise to a number of nice points of company law, and, although the Tribunal's procedures are not well adapted for determining such issues, the Tribunal would in principle have to determine Mr Ward's entitlement to represent the company, if the issue is raised. In fact, however, all these matters have recently been the subject of determination by the Central London County Court.

7. His Honour Judge Cowell on 27th March 2009 granted an interim declaration that Mr Ward and Mr De La Haye were validly appointed directors and enjoined Mr Guraya from acting or purporting to act as a director of the landlord. On 11th December 2009 His Honour Judge Collender QC struck out Mr Guraya's Defence and Counterclaim in the County Court action and then made the interim declaration and injunction final. We have not been shown the transcripts of the judgments, but the orders themselves are unequivocal.

8. Mr Guraya accepted before us that there had been no relevant change in circumstances since those decisions. In our judgment it is not for the Tribunal to reconsider what has been determined by the Courts. Mr Guraya's remedy, if he is unhappy with the County Court's decision, is to appeal. The Tribunal cannot go behind the decision of the Court. We accordingly hold that Mr Ward is entitled to represent the landlord and that the application to the Tribunal has been validly made by the landlord.

The law

9. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.

(3) for this purpose

(a) costs includes overheads and

(b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

(1) 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.

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

Section 27A

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."

The inspection

10. The Tribunal inspected the property on the morning of 29th April 2010 in the presence of Mr Ward and a number of the tenants. The block is built around three sides of an elongated courtyard with a garage area at the back. It probably dates from between the Wars. The front is on the west side and is somewhat narrower than the north and south sides. The block is three storeys high. Access is gained to the flats through some eight staircases.

11. The stairs were constructed of concrete with some patch repairs. Throughout they showed signs of wear, with some of the steps being chipped and all somewhat "dished". The stairs themselves are steep and would not meet current Building Regulation standard. The floors of the common parts were also showing signs of wear and in parts the surface was starting to break down.

12. The roofs of the block were conventional pitched tile. We observed the roofs from the ground with binoculars. The roof to the north side of the block had already been replaced and no further works were envisaged in relation to that block. The roofs to the

west and south sides were of some age. The tiles looked to be typical of the 1950's but it is possible that they are the original pre-War covering.

13. The roof to the west side had some slipped tiles and on the eastern side of the west block there was a hole in the roof. On the north side of the south block there were some slipped tiles. The south side of the south block did not appear to be particularly poor condition. Throughout the west and south blocks there was evidence of patch repairs having been carried out. The Tribunal did not look into the loft space.

The history

14. Southall Court has probably been the subject of more applications to the Tribunal than any other property in the country. In most years since at least 1999 there has been at least one application of one sort or another to the Tribunal. There has also been regular recourse to the County Court.

15. One long-running problem was that there were three different sorts of leases granted of flats in the block. There was a dispute as to whether the leases permitted the creation of a sinking fund. In 2006 the Tribunal ordered that type "A" leases should be varied to correspond with type "B" and "C" leases, but in a subsequent decision in 2007, which was unsuccessfully appealed to the Lands Tribunal, it was determined that the leases (including those varied) did not permit the creation of a sinking fund. As a result the landlord applied again to vary all the leases. By order of the Tribunal of 26th November 2009, the leases were varied and a sinking fund has now been instigated with standard terms for the collection of service charges on account.

16. The roof too has been a long-running issue. As long ago as 2002 the Tribunal determined that the roof at that time did not require replacement, although (as appears from a subsequent decision in 2006 at page 204 of the bundle) the Tribunal considered that replacement of the roof within a time scale of five to ten years was reasonable. In 2006 the Tribunal held that "the case for renewing the roof had simply not been made out" (bundle page 213). Mr Lawrence gave evidence to the Tribunal then and he did to us. The Tribunal in 2006 "accepted that Mr Lawrence gave his evidence in good faith [but] found it extremely difficult to reconcile his expert witness report dated 14 March 2006 with his original condition survey based on inspections carried out between October and December 2004. The condition survey had been meticulous and yet it revealed no major failure of the roof covering."

17. Nothing daunted, in 2007 the landlord again applied to the Tribunal but this time limiting its application to the roof of the north side of the block. Scaffolding had been erected so that Mr Lawrence had been able to inspect the north roof closely. His evidence there (bundle pages 237-238) was that the north roof (unlike the west and south roofs) had no sarking felt, so that there was no second line of defence if a tile slipped. The Tribunal concluded (bundle page 239) that "the time [had] now arrived when the roof of the north wing should be re-covered. At our inspection at roof level we were able to confirm the general degradation of the original tiles, many ill-fitting patch repairs, some chipped tiles, and tile debris in the newly installed guttering. We also saw that the weatherproofing properties of the roof covering had been compromised

by the need to use new and old tiles. From our inspection of the roof void we saw that daylight was visible in numerous places on both pitches."

The evidence

18. Before us Mr Lawrence gave evidence and was cross-examined by the tenants. He had prepared a report (bundle page 149ff) dated 22nd February 2010. In para 5.1ff he summarises the defects which had been in the condition survey report prepared in February 2005, based on inspections carried out in October-December 2004. He summarised his observations from the scaffolding erected in 2007. In para 5.19 he said: "Further external surveys and internal inspections of the relevant loftspaces in September and October 2007 and the summer-autumn of 2009 revealed the following: attempted sealing of holes in the sarking felt with carpet off-cuts and binbags...; a large bowl full of (assumed) rainwater positioned below a sarking felt hole above flat 18; very damp and mouldy valley board timbers at the south wing roof change in level; mice infestation...; polythene sheeting laid out above flat 40 ceiling as (assumed) water penetration defence; missing hip irons; valley and man gutters filled with eroded tile debris." He concluded in para 5.20 that "the tiles have deteriorated sufficiently to justify 100% replacement."

19. In cross-examination Mr Lawrence said intially that he did not know if the roof was currently leaking. When pressed, he said that, when he had visited the loft a few months before, there was evidence of historic leaks, but there was no evidence of current leaks. He accepted that "you could stagger on for a few more years." He said the cost of the roof was £65,000 and the cost of the stairways £18,000, to which professional fees of 9½ per cent and VAT needed to be added.

20. In relation to the staircases, his view was that the stairs were potentially dangerous. If an accident occurred, the landlord would have difficulty escaping liability.

21. The tenants' evidence was that there was no substantial problem of leaking in the west and south wings. They did not consider that the stairs were dangerous.

22. So far as consultation is concerned, it was common ground that the landlord had fulfilled its obligations under section 20 of the Landlord and Tenant Act 1985. It was also common ground that the tenants had made no comment whatsoever in response to the landlord's statutory consultation.

Decision

23. Once again, the Tribunal is forced to point out the discrepancy between Mr Lawrence' written evidence and the other evidence, in this case his oral evidence. Mr Lawrence had to concede that on his inspections in late 2009 there was no evidence of current leaks. At the hearing he accepted that the roof could "stagger on for a few years" with only patch repairs. This accords with the Tribunal's own view based on its inspection of the property.

24. The Tribunal also notes that there is now provision for a sinking fund and that contributions are being made to that fund. The tenants understandably complain that

they are being asked to contribute both to the sinking fund and to the major works. The purpose of a sinking fund is to obviate or reduce the need for large calls to fund major works. The lease variations were made for that very purpose.

25. The Tribunal reminds itself that a landlord has a wide discretion as to what works should be done and when and what programme of works should be adopted. The Tribunal also notes that the tenants made no response whatsoever to the consultation exercise carried out by the landlord, but on the very special facts of this case, this consideration can be given less weight. It was obvious to absolutely everyone involved in the case that the matter would be coming back, yet again, to the Tribunal as indeed it has, so the tenants' failure to comment is explicable, even if not excusable.

26. Notwithstanding these points, on the basis of Mr Lawrence' oral evidence and our inspection we find as a fact that the roof does not need immediate replacement and has some life left in it. It is not reasonable for the landlord at the moment to replace it.

27. That is sufficient to dispose of the issue regarding the roof, but we are reinforced in this view by the history of the lease variation. A landlord acting reasonably would take into account the fact that a sinking fund is being built up precisely in order to fund works such as that to the roof. It may of course be that the roof will need replacing before the sinking fund is large enough to cover the whole cost, but the landlord, acting reasonably, should have regard to spreading the burden of major works over time.

28. The work to the stairs and floor of the common parts is different. Mr Lawrence' evidence is that the stairs and to a lesser extent the floors are dangerous. We agree. If an accident happens, then the landlord is likely to have very little defence to a claim for personal injury.

29. No issue was raised as to the nature of the proposed works to the stairs and common parts. Accordingly we allow the raising of service charges in respect of those works in the sum of £18,000 plus 9½ per cent professional fees and VAT, a total of £23,159.25. Divided between 48 flats gives a rounded total of £482.50 each flat.

Costs

30. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal by the landlord. In the current case, it is true that the landlord has succeeded only in part in relation to its case on the stairs and floors of the common parts. However, in our judgment the landlord has behaved completely correctly in this matter. It commissioned a report from a surveyor familiar with the building. It carried out a proper section 20 consultation and not one tenant responded. In the light of the history, it applied timeously to the Tribunal.

31. If the tenants had responded properly to the section 20 consultation and made proper representations, which the landlord had decided to ignore, then the position would have been quite different, but in the current case the landlord had realistically no alternative to bringing the matter to the Tribunal. It has in our judgment acted reasonably throughout.

32. On these rather special facts, we consider that the proper order is that the tenants should pay the application fee of £350 and the hearing fee of £150. For the same reason we refuse to make an order under section 20C of the Landlord and Tenant Act 1985.

DECISION

The Tribunal accordingly determines:

a. **that each tenant is obliged to pay £482.50 way of interim service charge for the major works to be carried out in 2009-10;**

b. **that the tenants do pay the landlord £500 in respect of the fees payable to the Tribunal;**

c. **that the application for an order under section 20C of the Landlord and Tenant 1985 be refused.**

Adrian Jack, chairman 1st June 2010