## Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises

Field End Road, Eastcote, Pinner, HA5 1QG

The Committee members were
Mr Adrian Jack
Mr Trevor Sennett
Mr Alan Ring

## The Landlord:

The Tenants:

## London \& Cambridge Properties Ltd

Goddard Veterinary Group (83A); Mrs Shelley Hinchliffe and Mr Graham Hinchliffe (85A); Mr Chris Sheen and Mrs Jennifer Sheen (87A and 93A); Mr Paul Faith (91A); Mr Jonathan Blow (95A); Mr Paul O'Keeffee (101A); Ms Caren Westhead (103A); Greenlight Heathcare Ltd (111 and 111A)

## Procedural

1. By an application dated $5^{\text {th }}$ December 2009 the tenants sought determination of their liability in respect of major works carried out in 2007-08 at a total cost of $£ 101,630.47$.
2. The Tribunal inspected the property on the morning of $17^{\text {th }}$ May 2010. This was followed by a hearing at Alfred Place WCl, which continued into the following day. The landlord was represented by Mr H Roddis of CBRE Richard Ellis, who managed the building on behalf of the landlord, and Mr D Taylor, a building surveyor employed by the same firm. Of the tenants Mr P Faith and Mr and Mrs Sheen appeared representing themselves. In addition Mr Faith represented the other tenants.
3. After the hearing, as requested at the hearing, Mr Roddis sent to the chairman in electronic form a spreadsheet with his calculations of the sums claimed. The hard copy of the spreadsheet had been made available to the tenants and the Tribunal at the hearing. After the hearing Mr Faith sent an e-mail to the chairman's personal e-mail address. Since, however, the hearing had finished, the chairman did not open this e-mail.

## The law

4. 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

(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."

## The inspection

5. The Tribunal inspected on the morning of the first day of the hearing in the presence of representatives of both parties. We saw a between-the-Wars parade of shops with maisonettes above accessed via two staircases with gates and entryphone leading to an asphalt-covered walkway above the shop facades. The front doors of the maisonettes opened off the walkway. The block is brick-built with a sloping tiled roof to the front and sloping built up felt roof to the rear. There were skylights in the flat roof over back addition kitchens. To the rear are various single storey buildings associated with the commercial users and a common service road. The maisonettes have rear stairways.
6. The Tribunal was shown cracks to the arch above the entrance to the front stairway, cracks and blistering to the step coverings and to the walkways; brick pillars that have been repointed or rebuilt on the walkways and the paintwork to railings and woodwork to the maisonettes. The surface of the service road and rear paintwork was also pointed out to the Tribunal as was a gas pipe that had been painted (except to the south end of the block) yellow ocre.

## The leases and the amounts claimed

7. The story of the leases at the property is a complicated one. Over time there have been various different sorts of leases granted. Some are joint leases of the shop and flat above; others of just the flat. The repairing covenants in different leases are different. Indeed one shop with flat above was granted freehold.
8. Subject to one point, there was no dispute as to which flats were obliged to contribute to which type of repair. Nor was there by the end of the hearing any dispute as to the appropriate percentage of each type of work which stood to be recovered from individual flats. We attach marked "A" a copy of the spreadsheet which represented the amounts claimed by the landlord in their final form. (There had been some discussions in the course of the case which resulted in Mr Roddis amending his original schedule in a manner which met Mr Faith's objections.)
9. The one point disputed by the tenants as regards allocation was in relation to the roof repairs. Mr Faith suggested that the cost of a roof of a particular flat should be allocated to that flat. This is, however, contrary to the basic principle that the repairs to the block should be shared by those liable for the repairs, which was the principle adopted completely properly by Mr Roddis. (The sample lease of 85A provides for the managing agents to determine a fair proportion and it was agreed that the other leases did not in this respect differ from 85A's.)
10. In these circumstances we do not propose to set out the details of the individual leases.

## The agreed issues and the witnesses

11. It was common ground that the landlord had carried out a proper consultation under section 20 of the Landlord and Tenant Act 1985 and that, subject to the issues set out below, the service charge is payable under the terms of the various leases. It was also common ground that the Tribunal's jurisdiction was in respect of the residential premises
only. Where there was a lease of both the commercial and the residential elements together, the parties agreed that the Tribunal had jurisdiction to determine the amount payable in respect of the residential part.
12. Evidence was given by Mr Roddis and Mr Taylor on the landlord's behalf. Mr Roddis was clearly very experienced in property management. It was common ground that he enjoyed a good relationship with the tenants. In our judgment he was attempting to manage the property well and in particular was seeking to keep costs to the tenants down, so far as that was reasonably possible.
13. Mr Taylor was less experienced. He had worked as a building surveyor since 2003. It was he who drew up the specification of works in 2006. His lack of experience at that time showed itself in a degree of vagueness in some items on the specification. However this was a fairly small project and we do not consider it unreasonable to employ a fairly newly qualified surveyor to draw up the specification. Save in respect of one item, which we discuss below, we accept the evidence of Mr Taylor. He was doing his best to assist the Tribunal.
14. Mr Faith gave his evidence largely in his role of advocate for the tenants and we consider his submissions as we discuss each item. Mr Sheen had worked as a roofer for some 35 years and was able to give useful practical evidence in respect of matters connected with the roofs and rainwater goods. However he said that he had never acted as a prime contractor and his comments on pricing were therefore from the point of view of a small sub-contractor, rather than the point of view of a main contractor.

## The roof

15. The total spent on the roof was $£ 15,812.13$.
16. The tenants suggested that the upper roof of $85 \mathrm{~A}, \mathrm{Mr}$ and Mrs Sheen's flat, had been replaced in error. What, they said, should have been replaced was the lower roof (that over the kitchen at the back), which had been leaking badly.
17. Mr Taylor said that he had inspected both roofs and there was deterioration of the upper roof, which justified its replacement. We accept that evidence and are not satisfied that replacing that roof was a mistake. Accordingly we disallow nothing in respect of the upper roof of 85A.
18. The tenants attacked the cost of the skylights. The quotation accepted for the work (item 4.3.6) was $£ 6,000$ based on six skylights @ $£ 1,000$ each. Mr Sheen said that the materials would be $£ 50$ at most and that he would have been happy to have accepted $£ 300$ for the skylights in their current condition. He accepted that $£ 1,000$ would not have been out of line if the work had been done properly, but said that the lead flashings had not been properly plumbed into the brickwork.
19. Mr Taylor said that the roofer had used a self-sealing system, which was much cheaper than cutting into the brickwork. During the consultation procedure he had obtained a quote for the more expensive option and it was $£ 2,000$ per skylight. The use of the cheaper system was reflected in the price. Moreover, three years on, there were no real
problems with the roof and skylights.
20. The Tribunal notes that Mr Sheen had the option, if he was concerned about the cost of the works to the roof, of nominating a contractor himself. Mr Sheen said that he himself had never been a head contractor and did not have the skills to take all the repair work on himself. Nonetheless in our judgment he had during the course of the consultation the option of nominating a contractor.
21. If tenants do not take advantage of their right to nominate a contractor and if the landlord follows the statutory procedures properly and accepts the lowest quote for the work (as occurred here), it is rare that tenants will be able successfully to challenge the reasonableness of the price of the contractor. In our judgment, this is not one of those rare cases. The landlord has acted reasonably in its tendering process; the use of the self-sealing system is justified by the lower price of that system; and in fact there has not been a problem of leaks. Accordingly we disallow nothing.

## Rainwater goods

22. The total spent on rainwater goods was $£ 9,244.03$.
23. Mr Faith's complaint was about the guttering outside his flat 91A, which he said leaked due to perforations in the iron-work, thereby causing the wall to be damp. For the price, he said, you could have replaced the guttering in its entirety. Mr Sheen said that there had not been any bitumen on the inside of the guttering and that the price was very high.
24. It was common ground that Mr Taylor had attended at site some five times before and during the works. Mr Taylor's evidence was that he thought the problem was with the joints and that the contractors agreed with this analysis. He analysed the quote for the guttering and said it was reasonable.
25. The Tribunal agrees. The specification sets out the work required. Woodbridges were overall the cheapest contractor, so it was reasonable to use them. The breakdown at E6 of the bundle shows that the largest element was for redecoration of the guttering. Three years on, the condition of the rainwater goods is satisfactory. We disallow nothing.

## Chimney

26. No issue arose on the chimneys. $1^{\text {st }}$ and $2^{\text {nd }}$ floor elevations
27. After the landlord's explanation of this item and how it was calculated, the tenants dropped their objections. In any event there was nothing in the points taken. $£ 40$ per square metre for pointing is reasonable. There were of course on-going maintenance issues, but this is only to expected. The landlord was making reasonable efforts to keep the costs down.

## Stairs and balcony

28. There were a number of different points raised by the tenants. Firstly, they said that some
of the brick piers which held up the iron railing at the front of the balcony had been rebuilt, but at a slightly different height to the other piers. This is true. The reason for the difference is not entirely clear: it may be a result of using metric instead of Imperial bricks when rebuilding the piers. In our judgment, however, the difference in height is immaterial. It is virtually indiscernible when seen from ground level and is not aesthetically detrimental when seen at first floor level.
29. Secondly the asphalt covering of the balcony and of the stairs outside the building was splitting and blistering. The landlord said that this was an ongoing problem which was dealt with by patch repairs. In relation to the outside steps, the contractor would be brought back to deal with that issue. In our judgment that is a reasonable approach.
30. Thirdly the contract included an item for cleaning the common parts. The tenants' point was that there was already a cleaner, so there was duplication. In our judgment there is nothing in this. Builders are expected to clear up their own mess. A contract cleaner cannot be expected (save at additional cost) to clean up builders' detritus.
31. Fourthly the paint on the ironwork was blistering, which, the tenants argued, shows that it was not done properly in the first place. Again there is nothing in this point. We saw the work three years after it was painted. There was admittedly some blistering, but in our judgment there was nothing to suggest that this was anything other than the general deterioration which is to be expected in paintwork exposed to the elements.
32. Fifthly the tenants attack the price of painting of the ironwork. Whilst it is true that the contractors selected were not the cheapest on this particular item, they were the cheapest contractor overall. Accordingly in our view it was reasonable to appoint these contractors.
33. Sixthly the tenants say that the paintwork in the stairs had been affected by water ingress from the splitting asphalt of the balcony overhead. Mr Roddis said that they had carried out tests. There seemed to be no damp problem and they had replastered the base. On our inspection the paintwork was in poor condition, but the cause of that was unclear. We are not satisfied that the landlord has done anything which it should not have done or failed to do anything which it should have done. We accept Mr Roddis' evidence that damp had been investigated and was not the cause.
34. Accordingly we disallow nothing in respect of the stairs and balcony.

## The intercom

35. The landlord had replaced the intercom system. There were two boxes with buttons, one by each of the staircases. The landlord's case was that the intercom had been an ongoing problem. It was common ground that one of the intercom boards was not working at the time it was replaced.
36. The tenants' case was that the problem with the intercom board which was not working at all was simply a fuse problem. If, they argued, the landlord had investigated the problem properly, it would have discovered that all that was needed was a new fuse.
37. In our judgment, the evidence for this theory was lacking. It appears that after the new boards were installed a fuse did blow, thus temporarily knocking out the intercom board which had previously been broken. However, that does not show that the problem with the old board was also a blown fuse.
38. The Tribunal accepts the evidence of Mr Taylor that the replacement of the intercom was desirable and accordingly disallows nothing under this item.

## The rear access road

39. The works to the rear access road comprised "hack[ing] out areas of damaged hardstanding... and repair[ing] with materials to match existing and ensuring a level finish" (item 4.8.3) and "cut[ting] out cracks... and fill[ing] with a flexible joint" (item 4.8.4). (Item 4.8 .2 had been deliberately omitted by Mr Taylor.)
40. It was common ground that 4.8 .4 was not in fact done, notwithstanding that Mr Taylor had allowed $£ 875$ for this item. His explanation for this was that the sum had been allocated to item 4.8.3. We do not accept this explanation. It is clear that item 4.8 .4 was not done. There is no documentary evidence to show the reallocation and it would be contrary to good practice to reallocate monies in this way without a good documentary trail. It is more likely that Mr Taylor had overlooked the omission when he certified monies due to the contractor. In our judgment Mr Taylor was not giving a deliberately false account but he was a giving an ex post facto rationalisation of what occurred.
41. Accordingly we disallow $£ 875$.

## Professional fees

42. The amount of professional fees was not challenged, save that it was common ground that insofar as the underlying figures were adjusted, so too should the percentage fee on top be adjusted.

## Conclusion

43. The result of the adjustment to the figure for the rear access road is as appears from the spreadsheet attached. The result is that the figure payable by 83A is reduced from
 £4,193.46 to $£ 4,204.22$.
44. The figure payable by 95 A has increased slightly from $£ 2,821.56$ to $£ 2,827.62$. This is because this flat did not contribute to the rear access road, so did not gain from the reduction in that head of service charge. Instead the preliminaries attributable to this flat have increased: the reduction in the amount attributed to preliminaries in respect of the rear access road have increased the preliminaries attributable to the other heads of service charge.
45. 111 A is obliged to pay $£ 1,225.22$. This does not include the service charge payable in respect of 111 , which comprises commercial premises outwith the Tribunal's jurisdiction.

Costs
46. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal by the landlord. In our judgment the tenants have had only a very modest degree of success and of their number has in fact seen an increase in his service charge. In these circumstances we consider that the tenants should bear those costs. Accordingly we make no order in respect of those costs.
47. The landlord indicated that it did not intend to charge any of the costs of the current proceedings through the service charge. Accordingly we do not need to make any order under section 20C of the Landlord and Tenant Act 1985.

DECISION
The Tribunal accordingly determines
(1) that in respect of the major works in 2007-08:
a. the Goddard Veterinary Group (Flat 83A) do pay £1,225.22;
b. Mrs Shelley Hinchliffe and Mr Graham Hinchliffe (85A) do pay £4,204.22;
c. Mr Chris Sheen and Mrs Jennifer Sheen (87A and 93A) do pay £4,204.22 in respect of each flat;
d. $\mathbf{M r}$ Paul Faith (91A) do pay $£ 4,204.22$;
e. Mr Jonathan Blow (95A) do pay $£ 2,827.62$;
f. Mr Paul O’Keeffee (101A) do pay $£ 4,204.22$;
g. Ms Caren Westhead (103A) do pay $\mathbf{8 4 , 2 0 4 . 2 2 ;}$
h. Greenlight Heathcare Ltd ( $\mathbf{1 1 1}$ and $\mathbf{1 1 1 A}$ ) do pay $£ 1,225.22$ in respect of $\mathbf{1 1 1 A}$ (the Tribunal having no jurisdiction in relation to 111);
(2) that the above sums are payable to the landlord; and
(3) that in respect of costs that there be no order.

Adrian Jack, chairman

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