

REASONS

A. BACKGROUND

1. This application was made by Mr Andrew Dow and Miss Sarah Collins the Lessees of 40 Kingsland, Broxwood Way, London for a determination of the liability to pay service charges under s27A of the Landlord and Tenant Act 1985 ("the Act") and for a determination as to the liability to pay any costs incurred by the Respondent pursuant to section 20C. The years in dispute were 1993, 1994, 2005 & 2006.
2. At the hearing we were informed that a number of other Lessees had joined the application and it was agreed by the Respondent that the following people could be added as Applicants. They are:
 - (a) Mr & Mrs Denton of 57 Kingsland;
 - (b) Mr & Mrs Dyer of 38 Kingsland;
 - (c) Mr & Mrs Hearn of 37 Kingsland;
 - (d) Mr & Mrs Marden of 41 Kingsland;
 - (e) Mr & Mrs Leigh of 63 Kingsland;
 - (f) Miss Rowand of 17 Kingsland;
 - (g) Mr & Mrs Messeroli of 56 Kingsland
 - (h) Mrs Fraser of 46 Kingsland
 - (i) Mr M Desmond of 60 KingslandAccordingly, reference to Applicants in this decision relates to Mr Dow, Miss Collins and the above named.
3. In the Directions, which were issued on the 23 November 2005, the issues identified were the costs of major works to the Kingsland estate which had commenced in April 2005 and had been scheduled for completion some 26 weeks later.
4. At the hearing, Mr Stevens on behalf of the Applicants, confirmed that the issues we needed to consider related to the following:
 - Scaffolding
 - Prolongation of the contract
 - The liability to pay for the repair to paving stones
 - The works carried out to the private balconies
 - The need for, and cost of, cavity insulation
 - Works to repair the bay window roofs
 - General heading of rainwater outlets
 - The supervision and management costs

5. Insofar as works to the private balconies, rainwater outlets, copings, the bay windows and some asphalt works were concerned, it was alleged by the Applicants that these had been the subject of works carried out in 1993. The Applicants case was that they had been done incorrectly or badly at that time and had that not been the case they would not have needed to be the subject of works in 2005 and as such therefore should not be recoverable from the Applicants.

B. EVIDENCE

6. A well presented bundle had been prepared for the hearing and included the following written witness statements on behalf of the Applicants:
- from Mr Dow, the first one of which had been made in December 2005 and a second statement which was commenting upon the Council's response which had been made in January 2006.
 - from Mr John Halpin, a Chartered Surveyor and Chartered Builder with an MSC in Construction Management and Construction Law;
 - from Mr Denton;
 - from Mr Dyer;
 - and from Mr Hearn.
7. The Statements had been read by the Tribunal prior to the hearing and it is not necessary in these reasons to go into great detail as to the matters raised therein.
8. Mr Dow gave oral evidence and whilst accepting that there was some money to be paid to the local authority he disputed the level of that contribution bearing in mind the various issues raised. The statement addressed the disputed items that were outlined above and expanded upon same, explaining the concerns regarding the works carried out in 1993.
9. In respect of the paving slabs in the common areas it was alleged that the Council had allowed contractor's vehicles onto the estate and that in so doing the slabs had been damaged. It was agreed that any paving slabs that had been damaged during the course of the major works would be the responsibility of the contractors to make good and it was therefore only those paving slabs which had been damaged by vehicles prior to the major works which were the subject of dispute and for which the Applicants felt they should not be responsible.
10. The fear of additional costs arising from the prolongation of the contract was also raised and Mr Dow complained about the supervision fees rendered by Calfordseaden and the 10% management fee which the London Borough of Camden sought to recover in respect of their involvement.

11. Mr Denton was called to give evidence and was able to assist with regard to the works that were carried out in 1993 to the balcony and confirmed that he was also the tenant liaison representative in respect of these new works. He again accepted that he would have to pay some cost to the local authority but would do so provided the works were done in a proper and satisfactory manner. He told us that in 1993 balcony repair works were carried out which raised the level of the balcony surface to the door threshold causing water penetration to his flat. He also complained that copings had been changed which had added to the problem of dampness. In addition he told us that the surface water drain from the balcony had been narrowed and he was concerned that it would easily become blocked. All these problems appeared to have been corrected, save for the rainwater outlet, by the works in 2005. His complaint was that if the works had been done properly in 1993 the work would not have been necessary again in 2005.
12. Mr Dyer gave evidence as to the damage caused to the paving slabs and also raised the question as to whether or not works to a bin store constituted an improvement and not a repair and should not therefore be recoverable.
13. Mr Halpin, the expert called by the Applicants, was concerned at the lack of documentation he had received which had resulted in him having to make certain assumptions. In a helpful report he had commented upon a number of issues and in particular the apportionment of scaffolding costs, the cost of and/or the need for the cavity wall insulation, the Management fee claimed by Camden and initially the costs of a concrete fence which in fact were no longer part of the claim by Camden. Addressing those matters individually:
 - On the question of the scaffolding he simply made the point that as certain items of work were no longer being claimed by the local authority, in particular works to the roof and a fall arrest security system which had been sited thereon, the overall level of scaffolding would have been reduced and there should be a subsequent reduction in the amount charged to the Lessees.
 - He raised concerns about some repointing works which he thought were perhaps either excessive or unnecessary. He also indicated there were certain items that he could not in fact trace on site.
 - In respect of the cavity wall insulation he was concerned that there had been no proper feasibility study undertaken and certainly no cost benefit analysis and that in those circumstances he was not convinced that the cavity wall insulation was needed. It was expensive and constituted an improvement and thus he believed, would not be rechargeable. In addition there had been a problem with the original tenders and

subsequent increased figures for the cost of this element of the work. If any sum were due for this item he believed that only the original tender cost should in fact be claimed from the Lessees, and nothing more.

- On the question of supervision fees, he confirmed that he felt the charge made by Calfordseaden of 4.98% was competitive and indeed that was no longer an issue. He did however feel that the 10% charge was excessive for the management costs of the Respondent and at the hearing indicated that where the Lease provided for a 10% management fee to be paid that should include the costs of supervision. He did accept however that the overall standard of work was reasonable.
14. For the local authority Mr Tim Jackson gave evidence as to the formation and administration of the contract and the and the works that were undertaken. He addressed the following issues both in a statement dated 21 February 2006 and in evidence to the Tribunal.
- On the question of paving he told us that a Schedule and photographs had been taken prior to the commencement of works and that only works to those slabs which had been damaged prior to the works commencing would be charged to the Lessees.
 - On the balcony, he confirmed that water ingress was not purely as a result of the works that had been carried out in 1993 but also that on inspection there was pointing required of the balcony walls at high level and also the replacement of copings to the walls separating the private balconies. It was thought prudent to insert a vertical DPC where these walls abutted the main external walls of the flats.
 - In respect of the cavity wall insulation he told us that the feasibility study had been carried out. As a result of research and improvement in construction techniques and following the opening up of a small section of wall it was decided that it would be prudent to proceed with an expanding foam insulation which had the effect of not only providing insulation to the property but also creating additional structural integrity and preventing water ingress. There was some discussion concerning the final cost of the works. Apparently there had been faulty information given on the original tender and that subsequently, following the main contractors involvement, a tender for the cavity works had been obtained at some £77,326.00, considerably above the original figure. We were told that the London Borough had received a grant of £156.00 per unit which had been passed on to the Lessees to reduce the liability.
 - He commented briefly on the works to the bay windows indicating that the re-roofing was necessary to properly carry out the reparation works that were required.
 - Insofar as the bin store was concerned he told us there had been consultation and that there was a need to make a secure area which he believed was to the benefit of the

Lessees. He told us that the old bin stores had been the subject of works, in particular the renewal of doors but that this was necessary as there were gas meters situated in those old bin stores.

15. On the second day of the hearing, Mr Hearn who had not attended on the first day, spoke to his witness statement and confirmed that the matters contained therein were correct. They centred around injuries he had suffered in a fall, apparently caused by the condition of the paving slabs.
16. Mrs Howells then made submissions on behalf of the London Borough. She told us that the Council had no evidence of the works that were done in 1993 and that accordingly were prepared to compromise the matter on the basis that certain items would not be charged at all and that other items would not be charged to those Lessee who had paid for them in 1993.
17. The items which were not to be charged at all were the underground drainage and the CCTV works that were carried out, works to install the fall arrest security system and roofing works. Apparently there had been some error on the s20 Notice and these items were not therefore rechargeable to the Lessees.
18. Insofar as the works carried out in 1993 were concerned she told us that she believed that the Lessees of flats 20, 41, 57 & 60 would not be required to pay for costs in respect of rainwater outlets, asphalt works, private balcony works and works to the bay window roofs. She stressed however that there was no evidence that the works in 1993 had not been done satisfactorily but they were prepared to accept the word of the Lessees who were living on the estate at that time and hence their concession on this point.
19. On the question of scaffolding she confirmed there would be an apportionment on the basis of the rechargeable costs as suggested by Mr Halpin and we will deal with the figures later in the Decision document. On the question of the paving slabs she pointed out that the access way was a no through road and that the keys giving access were generic to enable emergency services access. She believed that others may hold the keys but it would be unreasonable to expect workmen and contractors not to go on to the area if they were carrying out works to properties. She apologised if people had difficulties in the past in gaining access to their flats but she thought it was reasonable that the Lessees should pay for costs to paving slabs which had been damaged other than by the contractors in respect of the major work.
20. On the question of the management fee she went into some length to explain the Council's position in this regard. Those Leases that charged 10% management fee did not in fact include the total cost that Camden incurred in dealing with home ownership issues. She felt

the local authority were undercharging and for example cited the management costs that had been levied to flat 56 Kingsland for the period 1999-2006 which totalled circa £1,190.00, some £600.00 or so less than should have been the case.

21. On the question of the works to the bin store and insulation she did not feel these were improvements but in any event the Leases allowed for those to be carried out. She directed us to a section of the Lease which provided for the local authority to charge for the collection and removal of rubbish (clause 6 of the Fifth Schedule) and argued that this clause enabled the Respondent to create the bin store area. Finally she confirmed that any liability to compensate the contractor for the extension of the contract would be borne by the Council and that any damages recovered from the contractor, should the delay be the contractor's fault, would be credited to the leaseholders.
22. Mr Stevens made submissions on behalf of the Applicants at the closure of the case. He again accepted that there was an obligation to pay for service charges but that they had to be reasonable and proportionate. He indicated that the fact that charges may be contemplated in the Lease did not make them reasonable. The measure was he said what sum the Landlord would incur if it had to meet the full costs. He felt that the works done in 1993 should not be the subject of recharging; that the local authority should meet the costs of repairing the paving stones; that the cavity insulation was not recoverable as no cost benefit analysis had been carried out and the supervision fee should be included within the management fee.
23. On the question of s20C application in respect of costs he indicated that the Leaseholders had been attempting to effect a settlement and that the local authority had either delivered papers late in the day or not at all.
24. In response to the section 20C application, Mrs Howells told us that the only costs she would be seeking to recover related to the attendance of Mr Jackson.

C. INSPECTION:

25. We inspected the subject premises prior to the commencement of the hearing. The property comprised 72 residential units in three blocks. We were told that 21 were subject of long leases. When looking at the estate from the main road there was a ramped paved access way to the right hand side, the entrance to which was blocked by two bollards secured by padlocks. We noted that a number of the flagstones were broken or lifted. The front block at ground-floor level had underground garaging. The blocks presented well. The recent decorative works appeared to have been carried in an acceptable and workman like manner. We were able to gain access to Mr Denton's flat for the purposes of viewing the works to the balcony and to the connecting doors between same. From there we were also

able to see the roof and the fall arrest system on roof of the block opposite. The estate itself is in a sought after area of Camden, close to Primrose Hill and surrounded by a number of private developments which would appear to house high quality expensive units of residential accommodation.

C. THE LAW:

26. Section 27A of the Landlord and Tenant Act 1985 requires us to determine whether a service charge is payable and if it is, by whom, to whom, the amount, the date upon which it is payable and the manner in which it is payable.
27. Section 20C of the Act enables the Tribunal on an application by a tenant to determine that costs incurred in connection with proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person specified in the application. The Tribunal is required to make such order as it considers just and equitable in the circumstances.

D. DECISION:

28. The local authority made a number of concessions during the course of the hearing and it is important to note those at this stage. They have been recorded in part in the recounting of the evidence but for certainty we record in this Decision the concessions that were made.
 - (a) The local authority confirmed that they would not be seeking to recover the costs of the CCTV investigation or the drainage works to the estate.
 - (b) The local authority confirmed that they would not be seeking to recover any costs associated with the fall arrest safety system which was secured to the roofs of the blocks nor indeed any roofing works to the blocks, except works to the bay window roofs.
 - (c) In respect of those lessees who had paid for works in 1993 which appeared at the time of the hearing to be the lessees of flats 20, 41, 57 & 60 there would be no recharging of costs in connection with works to the rainwater outlets, the asphalt, the private balconies and the bay window roofs. It is right that we should note that those costs which are not recoverable from the lessees who paid in 1993 should not however be passed on to the other Applicants or apportioned amongst the other lessees.
29. On the question of scaffolding Mrs Howells confirmed that the local authority was prepared to apportion the scaffolding costs on a pro-rata basis. The Tribunal has noted that the costs in respect of scaffolding to the estate which are rechargeable to the lessees will be £2990.66 and the costs rechargeable in respect of the blocks total £20537.42.

30. The local authority had, just before the hearing, prepared draft final accounts. The draft accounts had been sent to Mr Dow and others on 21 March and was accompanied by an e-mail from Miss Howells which stated "it still has not been agreed but Camden is making an undertaking to stick by the figures. This means that Camden will not pass on any increased costs in the final balance but should there be any reductions Camden will give the leaseholder the benefit". The e-mail also went on to say " I can confirm that we have been unable to accept your offer however we have extended the reduction of the rechargeable works to all items mentioned in your schedule as alleged as completed in 1993 for those who paid in 1993. It is also worth noting that while you have not been charged for the roof works including the fall arrest system. You have not been charged for the underground drainage 5.1.3 an extension of time to the estate works".
31. As can be seen therefore the local authority has made a promise to adhere to the draft figures and that any additional costs associated with the prolongation of the contract will be borne by the local authority but if there are damages to be paid by the contractor, should it be the contractor's fault, then the benefit of those damages will be passed to the lessees. With those matters in mind we turn now to the specific issues. We will deal with those under each individual item.
32. Bin Store: We are of the view that it is a benefit to the Lessees. We had the opportunity of inspecting and whilst it would, in our view, be an improvement, there is no doubt that the leases we have seen allow for the local authority to carry out improvement works. There is no challenge made to the cost of creating the bin store and the explanation as to the need to improve the doors to the four bin stores was reasonable, given the need to ensure that unauthorised persons are prevented from gaining access to the gas meters housed therein.
33. Scaffolding: We are satisfied that the local authority's apportionment arrangements are fair and reasonable and accept the figures they put forward at the hearing and which are referred to above.
34. The Balcony: We are prepared to accept that there may well have been fault in the works carried out in 1993 and concessions have been made to those lessees who are living on the estate at that time and who made payments towards those costs. However the same cannot be said of the works that were carried out in 2005. Our inspection of the resurfacing of the balcony indicated that it had been carried out in the proper manner and we do not believe that the complaints with regard to the size of the rainwater outlet are reasonable. It is obviously the responsibility of the individual lessees who use these private balconies to make sure they are kept free of rubbish but it seems to us that the water pipe was quite adequate for that purpose. It should also be noted that Mr Denton confirmed in the course

of the hearing that the problems to the 1993 works had become apparent within a few weeks of those works having been carried out. It seems to us that the limitation period of six years would apply to those works in 1993. In Mr Dow's case he did not move to the estate until 1997 and took no course of action until these proceedings. In those circumstances his claim against the council for those works would in our view be statute barred, even if a cause of action was available to him, which we doubt. Furthermore, as the Council has agreed to refund to those lessees who paid for the works in 1993 the costs incurred in 2005, they have done all they reasonably need to do. It should also be noted that there appeared to be evidence that the water problems were caused not just by the raised balcony levels but also by coping works and water ingress through the balcony wall. We find therefore that the works carried out to the balcony in 2005 are reasonable and necessary and that the costs of same are recoverable from those lessees who should contribute, subject to the Council bearing the costs of those lessees who are exempt from payment for the reasons stated above.

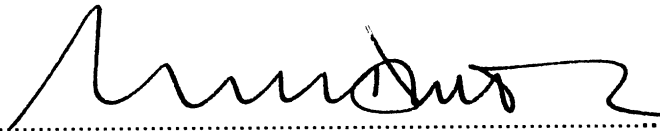
35. Paving Stones. The local authority has confirmed that the contractors would be responsible for any damage caused during the course of the building contract. It does not however seem to us reasonable that the Council should be responsible for damage caused to the paving slabs prior to the commencement of the building works. We accept that any tradesmen who were on site were likely to have been called by the lessees or tenants to carry out works to their properties and although for example Mr Dyer complained that when he moved in he could not have access for his removal van we accept what Mrs Howells said that namely this is not a thoroughfare and that the use of the communal area by vehicles is rare. It does not seem to us reasonable to expect the local authority to monitor on a daily basis such traffic as there may be and in those circumstances it seems to us wholly reasonable that the residents should bear the costs of the additional repairs.
36. Cavity Insulation: We accept that the galvanised cavity wall ties can fail. In that regard we accept Mr Jackson's evidence. It appeared there was no patent defect. However, we are prepared to accept that there could be latent problems and the benefit of improved insulation, improved structural integrity and improved water prevention were acceptable reasons to proceed with the cavity wall works. It may be that a costs benefit analysis should have been carried and we note also the concerns as to the escalating cost of the works from the original tender figures that were given. However those do not, in our findings, reflect badly on the local authority and we are prepared to accept that it was reasonable for them to proceed to install the cavity wall insulation for the reasons we have

stated. We accept that the costs associated therewith are reasonable given the expense of the material used.

37. Bay Windows: This was not seriously challenged by the lessees. We accept Mr Jackson's evidence in this regard and as an allowance has been made to those who paid in 1993 we think it is reasonable for the lessees who have come to the estate since that time to make their due contribution towards these elements of costs.
38. Rainwater Outlets: So far as the rainwater outlets to the private balconies are concerned, we dealt with those previously. The rainwater outlets to the bay windows appear to have been resolved by the re-roofing works which we have found are recoverable.
39. Supervision/Management: The supervision fees of 4.98% charged by Calfordseaden are not in dispute. Insofar as the Management charges are concerned we must say that we believe it is perhaps time for the local authority to come in line with most Managing Agents and indeed the RICS recommendations and charged a fixed annual fee per unit. The only "evidence" that we received from Mrs Howells as to the costs to the local authority of managing the block was without documentary support and unfortunately the lady who may have been able to provide further evidence on the matter was taken ill and unable to attend on the second day of the hearing. It should also be noted that in respect of the lease for Mr Dow's property, there is contained in the Fifth Schedule at paragraph 13, a clause which states *"the landlords Management charges for the estate in an amount equal to ten percent of all other items included in the service charge"*. There are different provisions in another lease for premises on the estate which provides for the landlord's management and administration costs to include but not be limited to the actual cost in terms of staff time and central establishment costs of undertaking a number of matters. The evidence from Mrs Howells, such as it was, was that 10% did not in fact cover these costs.
40. Our finding is that if one considers both Supervision and Management fees as an overall charge of 15% for the running and administration of a contract of this nature it would not be unreasonable. Therefore in respect to this matter we will allow the charge of 10% to stand. This 10% Management charge of course should be made against the reviewed and amended final account.
41. Various Matters: During the course of the hearing Mr Dow complained that his windows had not been cleaned properly following the works. The question of the re-pointing to the balcony walls was raised but not challenged to any great degree and there was some suggestion that the doors connecting the private balconies needed replacing in

1993 and the costs should not have been incurred in 2005. We find that the question of the window cleaning is de-minimis and is not something that should be taken into account. The re-pointing works, on inspection, needed to be done we are prepared to accept that the costs are reasonable. Insofar as the timber doors are concerned, if they needed replacing in 1993 and were not, then no costs were incurred by the lessees at that time. The need to replace was not challenged and the costs are therefore recoverable from the lessees. Finally on the prolongation of the contract we stated above the council's intentions and do not need to deal with that matter further.

42. We turn finally to the question of the s20C costs. We believe that the Council has acted reasonably. They made offers of settlement before the matter came before the Tribunal which were not accepted by the lessee. There was no complaint made as to the standard of workmanship, nor indeed, in the main, as to the level of costs incurred. In those circumstances we would not have made an order that the Council's costs should not be recovered. However Mrs Howells confirmed, and we record, that the Council is not going to make a charge for its own officers time in connection with these proceedings. However we are prepared to allow that the costs of Mr Jackson should be recovered from the lessees by way of the service charge regime. However those costs must be reasonable and if they are not then the lessees are entitled to challenge same in due course.
43. We hope the London Borough of Camden will be able finalise the account details shortly and that the Applicants will see from the concessions made by the local authority and our findings that they are obliged to pay those sums which may now be demanded of them by the London Borough of Camden in respect of these works.



Chairman

Dated 18 April 2006