

LON/00AG/LSC/2006/0431

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: 32E Shoot Up Hill, Kilburn, London, NW2 3QD

Applicant: Mr Heral Bharadia

Respondent: London Borough of Camden

Application: 12 December 2006

Inspection: 16 April 2007

Hearing: 16-17 April 2007

Appearances:

Tenant

Mr Heral Bharadia

Ms N Raj

Leaseholder

Leaseholder

For the Applicant

Landlord

Mr K Schooling

Mr C Merrick

Mr S Sorour

Ms P Walter

Housing Officer

Surveyor (Calford Seaden)

Project Manager

Project Manager

For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)

Mr J Power FRICS FCI Arb

Mr D Wilson

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AG/LSC/2006/0431

**IN THE MATTER OF 32E SHOOT UP HILL, KILBURN, LONDON, NW2
3QD**

**AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

BETWEEN:

MR HERAL BHARADIA

Applicant

-and-

LONDON BOROUGH OF CAMDEN

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness of various items of service charge costs arising in the 2001/2002 service charge year. The particulars of the service charge costs in issue are set out below.
2. The Applicant occupies the property known as 32E Shoot Up Hill, Kilburn, London, NW2 3QD ("the subject premises") by virtue of a lease dated 8

December 1997 granted by the Respondent to a Mr Colin Reginald Simon Caffell for a term of 125 years from 18 September 1989 (“the lease”). The Applicant is the present assignee of the leasehold interest. No issue arises in these proceedings about the Applicant’s contractual liability to pay the service charge. It is, therefore, not necessary to set out the detailed service charge provisions save for the bare terms.

3. Clause 1 of the lease provides that the relevant annual service charge period shall commence on 1 April in any year until 31 March of the following year. The lessee’s service charge contribution in any year is to be calculated in accordance with the Fourth Schedule of the lease. The contribution is to be paid by four equal instalments on 31 March, 30 June, 30 September and 31 December. It is common ground that the service charge costs disputed by the Applicant fall within the definition of service charge expenditure, as defined in the Fifth Schedule, and recoverable as such under the terms of the lease.
4. By clause 3.2.1 of the lease, the lessee covenanted to pay, by way of further additional rent, the service charge contribution in accordance with the lease terms set out above. That contractual liability is qualified by those matters set out subsequently at clauses 3.2.2 to 3.3. The lessor’s repairing and maintaining obligations are set out generally at clause 4 of the lease.
5. The factual background that gave rise to this application is as follows. On 17 March 2000, a Mr Tim Hart of Calford Seaden, the firm of Chartered Surveyors, Project Managers and Architects instructed by the Respondent,

prepared a Feasibility Report for External Repairs and Redecorations at 32 and 92 Shoot Up Hill. The works specified in relation to the subject property appears at paragraph 5.1 of that report. The estimated cost of the proposed works was placed at £38,539. Having consulted with the leaseholders in accordance with s.20 of the Act, it is believed by the Respondent the proposed works commenced on or about 22 January 2001 and a certificate of practical completion was issued on 14 February 2002. The final account placed the actual cost of the works carried out at £113,220.07. The service charge demand served on the Applicant dated 26 September 2001 stated his liability for the works was £10,350.53. At the hearing, this figure was reduced to £109,322.91.

6. As a result of their concerns about the necessity and standard of some items of work, three of the leaseholders, including the Applicant, instructed their own surveyor, Mr Stephen Cornish, to monitor and comment on the works generally. Mr Cornish prepared two reports in total. His first report is dated 9 May 2001 arising out a site inspection on 18 April 2001. His second report is dated 16 October and arises out of two further inspections on 13 and 20 September 2001, when it appears that the works had largely been completed, save for “a large list of snagging items”. In both of his reports, Mr Cornish made a number of criticisms mainly about the necessity for certain items of work. Where relevant, his comments and findings are set out in the body of this Decision.

7. It appears that a large volume of *inter partes* correspondence subsequently took place in which the Applicant sought disclosure of various documents relating to the works that had been carried out and further challenged the necessity for various items of work and/or standard generally. Apparently, that correspondence proved to be inconclusive and on 12 December 2006, the Applicant issued this application. The particulars of the items of work and/or cost challenged by the Applicant are each dealt with in turn below.

Inspection

8. The Tribunal inspected the subject property and the Applicant's premises on 16 April 2007. The property is a detached 3-storey dwelling built during the inter-war years and is situated at the junction of Shoot Up Hill and Kingscroft Avenue. The property is comprised of Flats A-E, being 5 self-contained flats. Flats A and D are located on the ground floor, Flat B on the first floor and Flats C and E are located within the Mansard roof. The Mansard roof is pitched and was covered in a newly laid clay tiles. The walls are brickwork covered in a rough cast render. A flat terrace roof is accessed via Flat E. The windows are generally of a timber casement type, however, the windows to Flat D have been replaced with PVCu framed double glazed units.

Hearing

9. The hearing in this matter also commenced on 16 April 2006. The Applicant appeared in person. The Respondent was represented by Mr Schooling, a Housing Officer in its employ. Mr Merrick, a Chartered Surveyor from

Calford Seaford, gave evidence on behalf of the Respondent in relation to those items of work being challenged by the Applicant.

(a) Drainage Works

10. This was conceded by the Applicant as no longer being in issue.

(b) Main Roof - £29,122

11. The Applicant submitted that only approximately 30 tiles needed replacing on the former roof because it was still largely sound, having been replaced approximately 13 years earlier. This submission effectively repeated the conclusion reached by Mr Cornish on his earlier reports. He found no obvious signs of major problems and that the original specification to replace 30 tiles was satisfactory. The complete renewal of the roof covering was unjustified.
12. In chief, Mr Merrick said that the original specification to replace 30 tiles had been as a result of a survey of the roof from the ground. This had revealed no major cause for concern. However, when the scaffolding had been erected to carry out the works in May 2001, a further inspection of the roof was carried out by a colleague, Mr Stuart Searle, in or about June 2001. He concluded that the roof suffered from some major detailing problems at the junction of the windows and the flat roof areas caused by the thicker replacement tiles. This had led to deterioration in the window joinery and external render. The Respondent, therefore, decided to renew the roof covering at an estimated cost of £24,652.25.

13. The final cost of renewing the roof covering is stated to be £29,122 in the final account. The decision taken by the Respondent to replace the roof covering was based entirely on the evidence of disrepair found by Mr Searle. However, this evidence was limited to disrepair to some of the abutments to the window. It did not reveal any other significant disrepair to the roof covering as a whole. The inference to be drawn is that the entire roof did not require replacement. It appears that no consideration had been given to effecting the necessary repairs to the roof. No comparison had been made between the cost of repairing the roof as against the cost of complete renewal. Certainly, under the terms of the lease the Respondent's contractual repairing obligation, as set out in clause 4 of the lease, did not extend to replacement of the roof. It was limited to the extent of the evidence of the disrepair that was identified by Mr Searle and that the appropriate repairs should have been carried out instead. It follows that the Applicant's contractual liability is also limited to the cost of those repairs as opposed to the cost of replacing the roof. The Tribunal, therefore, allowed the cost of £5,000 as being a reasonable sum for the cost of effecting the roof repairs that were necessary. Accordingly, of the total sum claimed by the Respondent, the sum of £24,000 is disallowed.

(c) Insulation - £893.75

14. The Applicant simply submitted that the cost was not justified as the roof insulation had been replaced when minor roof works had been carried out in 1999. The Respondent contended that this cost was recoverable as an item of service charge expenditure within the meaning of the Fifth Schedule.

15. In his first report, Mr Cornish was unable to comment on this matter because he was unable to inspect the roof voids. There was no evidence from the Applicant that the roof insulation had in fact been replaced in 1999 as alleged. The burden of proof is on the Applicant to do so and the Tribunal was of the view that he had not discharged that burden. The Applicant did not challenge either the need for roof insulation or the costs *per se*. Accordingly, the Tribunal allowed the sum of £893.75 as being reasonable.

(d) Flat Roof Terrace & Bay Window Roof

16. The Applicant conceded that these costs were no longer in issue.

(e) Replacement of Guttering & Down Pipes - £4,250

17. The Applicant accepted that, at the relevant time this item of work was carried out, it was necessary. However, he submitted that it would not have been required if the Respondent had carried out historic maintenance. An additional cost of £2,500 had thereby been incurred, which included the replacement of the fascias and soffits. This additional cost would not have been incurred had the gutters and down pipes not been replaced. This submission effectively repeated the conclusions reached by Mr Cornish in his first report.
18. It was conceded, in terms, on behalf of the Respondent that cyclical maintenance of the gutters and down pipes had not taken place and that the leaseholders had, therefore, not incurred any annual liability for this cost. It

was submitted that it was more cost effective to repair and/or replace the gutters and down pipes if and when cyclical maintenance was carried out and that this cost was reasonable. In evidence, Mr Merrick said that the gutters had become distorted and were comprised of varying materials. It was decided that the fascias and soffits also needed replacing at low level and that at the same time the down pipes should also be replaced.

19. The argument of historic neglect advanced by the Applicant was not supported by the evidence. Despite Mr Cornish's conclusion that there had been a failure on the part of the Respondent to historically, his report did not set out what cyclical maintenance should have been carried out by the Respondent and at what cost. Moreover, even if the Applicant's submission was correct, Mr Cornish did not comment on whether those cyclical costs would in total exceeded the costs claimed by the Respondent. In the absence of any such evidence, the Tribunal was bound to conclude that they were reasonable and were allowed as claimed.

(f) Front Elevation - £3,911.25

20. This cost related to patch repairs to the front elevation and the redecoration of those areas. The Applicant accepted that the work had been necessary. Of the total cost, the Applicant's challenge was limited to putting the Respondent to proof as to how the cost of £2,875 for hacking off the defective rough cast rendering had been arrived at. This was a matter raised by Mr Cornish in his first report. The Applicant also submitted that the standard of redecoration to

the front elevation was not satisfactory. Mr Cornish did not comment on this matter in either of his reports.

21. Mr Merrick accepted that there were some areas of discolouration to the front elevation. He explained that this had occurred because it was difficult to match the paint. Some of the areas where the discolouration appeared were areas where the contractor had subsequently carried out further repairs, which had not been carried out properly in the first instance. In addition, severe pollution caused further staining by sitting on the rough cast, which exacerbated the patchy effect.
22. The Tribunal accepted Mr Merrick's evidence that the patchy decorative effect was not as a result of bad workmanship but for the reasons given by him. The Tribunal was also satisfied that having regard to the extent and the nature of the repairs carried out, the sum of £2,875 challenged by the Applicant, was reasonable and allowed as claimed.

(g) Windows, Doors & Joinery - £17,905

23. It was common ground between the parties that the window repairs carried out were necessary. In his initial report, Mr Cornish sought clarification as to how the initial estimated cost of £2,750 had been arrived at because it was not entirely clear from the specification. He also advised that further clarification should be sought about "joinery repairs generally" included in the specification, as the work specified appeared to overlap with items of work already specified. At the hearing, the Applicant's case was that the cost of this

work generally was excessive having regard to the poor standard of workmanship. Some elements of the window joinery had completely rotted through since 2001. Some of the putty had fallen out, the paintwork was peeling and some of the hinges were rotten. He submitted that the entire amount claimed should be disallowed.

24. Mr Merrick's evidence was that the work had been carried out almost 7 years ago. At the time, it was believed that the windows were capable of being repaired using an epoxy resin mortar. The Respondent had attempted to ensure that the windows lasted for a further 7 years. He accepted that it was now necessary to replace a number of windows because they were now in disrepair. He also conceded that the sum of £2,750 at item 12.12.1 in the final account appears to have been charged twice and should be deleted.
25. The Applicant went on to challenge other specific items in the final account. Firstly, was item 12.13.3, where the sum of £2,400 was claimed for the cost of removing and replacing 3 windows to Flat A (described as Flat C in the original specification). The Applicant asserted that there was only one window to Flat A and not 3 as stated. This was not accepted by Mr Merrick.
26. Secondly, the Applicant contended that the sum of £325 claimed (at item 12.12.2) for replacing the bathroom window also to Flat A had not been incurred. The window had simply been sanded. Again, this was not accepted

by Mr Merrick. He said that a contract instruction clearly showed that the window had been replaced.

27. Mr Merrick then conceded that the sum of £2,875 claimed for supplying and fitting a draught proofing system should be deleted from the final account because this was not evident at the time of inspection of the subject property. He further conceded the sum of £800 at item 12.10.6 because the adjoining garage did not form part of the demise and had been let separately by the Respondent.

28. In relation to the joinery works generally, it is perhaps important to emphasise that the Tribunal is being asked to determine the historic position in 2001 and not the present condition of the joinery at the time it inspected the property. The Tribunal considered it was material that Mr Cornish made no mention in either of his reports that the standard of workmanship carried out to the joinery was not reasonable, despite have inspected the property on three occasions. There was no other evidence, expert or otherwise, to support the Applicant's assertion that the work that had been carried out had not been done to a reasonable standard *at the relevant time*.

29. As to items 12.12.2 and 12.12.3 respectively in the final account, the Tribunal, on balance, accepted the Applicant's assertions that the bathroom window to Flat A had not been replaced and that only 1 other window had in fact been replaced. At the time the work had been carried out, the Applicant was a resident of the property and was closely monitoring what was taking place

whereas the evidence of Mr Merrick was entirely hearsay. To a large extent he relied on contract instructions in support of the Respondent's case and, having regard to the long passage of time that had elapsed, the Tribunal considered this evidence to be less reliable than the personal knowledge of the Applicant. Accordingly, the Tribunal disallowed the entire amount of £325 claimed in relation to item 12.12.2 and only allowed the sum of £800 claimed in relation to item 12.12.3.

(h) Front Door

30. This item of cost was agreed at £500 by the parties.

(i) Garden Areas - £2,760

31. The Tribunal did not understand the Applicant's case on this point. He conceded that at the relevant time the clearing of the garden had been carried out by the Respondent. However, since then the Respondent had failed to maintain the area and as result it was now a "rubbish site". Therefore, the cost claimed was excessive.

32. In the light of the concession made by the Applicant that at the relevant time the garden had been cleared, the Tribunal was bound to find that the cost claimed by the Respondent was reasonable. The alleged failure by the Respondent to subsequently maintain the area was, with respect, completely irrelevant to this issue as it raised an entirely different point relating to a breach of covenant.