



**Residential  
Property**  
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
Landlord and Tenant Act 1985 – Section 27A  
LON/00AE/LSC/2008/0042**

---

**Address** : **Cairnfield Court, Cairnfield Avenue, London  
NW2 7PP**

**Applicant** : **Strandview Limited**  
**Landlord**

**Represented by** : **Mr I Martin MRICS of Martin Surveying  
Associates**

**Respondent s** : **The Lessees of Cairnfield Court**  
**Tenants**

**Represented by** : **Mr M Ahmadi represented the lessees of flats  
2, 4,6,7,8 & 9 the lessees of flats 1, 5 and 10  
were not represented**

**Date of Application:** **30 January 2008**

**Date of Hearing** : **22 May 2008**

**Date of Decision** : **30 May 2008**

**Tribunal** : **Mr John Hewitt** **Chairman**  
**Mr John Power** **MSc FRICS FCI Arb**  
**Ms Sue Wilby**

## Decision

1. The decision of the Tribunal is that:
  - 1.1 The Specification for Repair Works, a sample of which is at pp10-30 of the trial bundle is a reasonable specification and scope of works required to be undertaken to Cairnfield Court.

- 1.2 If the works are carried to an acceptable standard and broadly in line with the tender submitted by Tatham & Gallagher Limited at a cost of £78,400 plus VAT a reasonable cost of the project will be as follows:

Cost of works	£78,400
Professional fees at 15%	<u>£11,760</u>
	£90,160
VAT at 17.5%	<u>£15,778</u>
<b>Total</b>	<b>£105,938</b>

- 1.3 The persons by whom the service charges would be payable are the persons in whom the respective leases are vested at the time when a lawful demand for payment is made.
  - 1.4 The person to whom the service charges would be payable is the party in whom the freehold reversion (or other superior derivative interest) is vested at the time when the works are completed.
  - 1.5 The amount payable by each lessee would be the rateable or due proportion of the cost of works payable by virtue of the provisions of clause 2(6) of the respective leases of the lessees.
  - 1.6 The amounts due from each lessee to the freeholder would be payable promptly following the completion of the works and upon the service of a demand by the landlord delivered to each

lessee compliant with s47 Landlord and Tenant Act 1987 and The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 and supported by evidence of the payment to the contractor of cost of the works and the payment of the professional fees, a copy of the certificate issued by the Contract Administrator to the effect that the works have been completed satisfactorily and to a reasonable standard and at a final cost in conformity with the contract, such certificate to show the total amount due to the contractor.

1.7 The manner in which the sums due would be payable is by cheque or such other appropriate manner of payment convenient to the parties.

2. The findings of the Tribunal and the reasons for its decision are set out below.

**NB** Later reference to a number in square brackets ([ ]) is a reference to the page number of the trial bundle provided to the Tribunal for use at the hearing.

## **Background**

3. This application is made pursuant to s27A(3) of the Act in relation to major works of repair proposed to be carried out by the Applicant.

4. The Applicant is the landlord of Cairnfield Court (the Property), a development of 11 flats constructed in the late 1950s. There are four flats on each of the ground and first floors and three flats on the second floor, beneath a flat roof. The main entrance to the Property is off Cairnfield Avenue with a secondary access by way of a service road

running parallel to Cairnfield Avenue at the rear. There is a small mature garden area to the rear of the development.

5. We were told that eight of the flats are 2 bedroom self-contained flats and that three are three bed roomed.
6. The Respondents are nine of the 11 lessees. Two of the flats, numbers 3 and 11 are vested in the landlord. The lessees of flats 1, 5 and 10 have not taken any part in these proceedings.
7. At the hearing the Applicant was represented by Mr I Martin MRICS. The lessees of flats 2,4,6,7,8 and 9 were represented by Mr M Ahmadi who is the uncle of Ms S Safavi who is the lessee of flats 4 and 7. Mr Ahmadi told us that he was a civil engineer.

### **Inspection**

8. On the morning of the hearing the Tribunal had the benefit of a site visit to inspect the Property. We were given access to the flat roof, flat 11, the common parts and the grounds.
9. Mr Martin was present with a colleague. Mr Ahmadi and Ms R Garwolinska, the lessee of flat 9 were also present.
10. Amongst other things the Tribunal noted that uPVC double glazed windows had been installed in several flats in place of the original Crittall metal windows. Mr Martin's assistant calculated the windows as follows:

<b>Floor</b>	<b>uPVC</b>	<b>Metal</b>
Ground	20	None
First	15	5
Second	5	15

Evidently a number of lessees have installed uPVC windows at their own expense and some may have done so without landlord's consent.

### **Matters in Dispute**

11. Both at the site visit and at the hearing Mr Ahmadi stated that so far as the lessees whom he represented were concerned the only matter now in dispute was the amount of the professional fees of 15% of the cost of works, plus VAT thereon proposed to be incurred by the Applicant.

### **Matters Agreed**

12. Both at the site visit and at the hearing Mr Ahmadi stated that the scope of works proposed to be carried out as described in the Specification for Repair Works prepared by Mr Martin was now agreed and accepted by the lessees whom he represented.

### **The Leases**

13. A sample lease, that for flat 11, is at [100-110]. It is dated 17 April 1959 and was granted by Courtnette Company Limited to Henry Kent for a term of 99 years from 24 June 1936 at a rent of £14 pa payable in advance by four equal instalments on the usual quarter days.
14. Clause 2(6) is a covenant on the part of the lessee:

*'AT all times during the said term to pay and contribute a rateable or due proportion of the expenses of... painting all the outside wood and ironwork and other outside parts of the said building and maintaining making repairing supporting rebuilding and cleansing of foundations dividing floors roads ways passageways passages pathways gardens sewers drains pipes watercourses water apparatus cisterns gutters party walls party structures fences easements and appurtenances ...including the repairing and maintaining the roof of the said Building such proportion in the case of difference to be settled by a single Surveyor to be agreed between the Lessor and the Lessee and in default of agreement by a single Surveyor to be nominated by the President of the Royal Institution of Chartered Surveyors*

*and that the decision of such Surveyor as aforesaid shall be binding'*

15. Clause 4(3) is a covenant on the part of the lessor:

*'...to repair and keep and cause to be kept in good repair and condition the building of which the said flat forms part and the roofs walls foundations dividing floors fences roads ways passageways pathways gardens drains sewers pipes and watercourses gutterways and water apparatus'*

### **Evidence**

16. Mr Martin gave evidence. He said that the consultation process provided for by s20 of the Act had been complied with. Mr Martin took us through the trial bundle. At [3-4] there is a sample copy of the Notice of Intention to Carry Out Works. Mr Martin explained that he drew up the Specification for Repair Works and submitted it to three contracting firms. G.S. Garey & Sons Limited declined to tender due to a sudden influx of work see letter at [8]. Mr Martin produced a copy of the priced tender submitted by Tatham & Gallagher Limited at £78,400.00 [9-31] and a copy of the priced tender submitted by ROK at £81,193.38 [32-54].
17. Mr Martin said that the preference was to go with the lower tender submitted by Tatham & Gallagher Ltd. He said that he had worked with them before and was satisfied with their work. He also said that he was satisfied with the two tenders that were received.
18. Mr Martin produced a sample copy of the Statement of Estimates [55-58] and copies of subsequent correspondence [59-63].
19. Mr Martin explained that the landlord was keen to proceed with the works as soon as possible. Mr Martin said that the terms of the leases did not provide for payments to be on account or in advance and the

Applicant was keen to establish that the scope and cost of the proposed works were both considered to be reasonable by a leasehold valuation tribunal hence the application under s27A(3) of the Act.

20. Mr Martin produced a sample lease [100-110]. Mr Martin said that the leases were granted in common form. Mr Martin said that he had not previously been employed by the Applicant and he was not retained as the managing agent. Mr Martin did not know if there was a differential in service charge proportions as between the 2 bed room flats and the 3 bed room flats. Mr Martin also said that as the Applicant had retained two flats, which were let out, the Applicant itself would be responsible for the service charge contributions attributable to those two flats, numbers 3 and 11.
21. The main challenge to Mr Martin's evidence related to his agreement with the Applicant to act as the Contract Administrator and to charge professional fees for his services at 15% of the contract price of works. Mr Martin told us that the professional fees covered the complete project from inception to completion and included the following tasks:

- Initial site inspection;
- Preparation of specification;
- The s20 consultation process;
- Invitations to tender, analysis of tenders , and preparation of a tender report;
- Preparation of contract documents and contract administration;
- Supervision of the works to include negotiation of variations and omissions;
- CDM compliance issues – Mr Martin said he was a registered CDM Planning Supervisor
- Final inspection of works, snagging issues and final certification

Mr Martin said that typical fee rates for this type of project were in the 10%-15% range. For him the deciding factor to seek 15% was the state of the building and the potential complications which may well involve more than usual site visits. Mr Martin explained that a major component of the project was the roof and it was not known what will be found until it is opened up. Mr Martin said that he has taken a commercial view. Moreover his fee proposal included all the Health & Safety issues.

In addition to the fee Mr Martin said that he would expect to recover standard expenses. He did not anticipate these would amount to much and would cover such expenses as Land Registry fees, extraordinary printing or copying that might arise.

22. Mr Martin was cross-examined By Mr Ahmadi. He was asked about a planning consent said to have been obtained by the Applicant to construct an extra two flats on the roof of the building. Mr Martin said that he was aware that lessees believed that such a planning consent had been granted but he was not personally aware of it and had not discussed it with the Applicant's representatives. He was however quite clear that the proposed roof works were not in any way designed to facilitate any works to construct additional flats. Mr Martin did accept that if, in due course, additional flats were to be built the construction work required would involve taking up the new flat roof comprising part of the present project. Mr Martin said that he would review the roof renewal works if this new build is anticipated.

23. Mr Martin also accepted that a substantial component of the project costs was the expense of scaffolding required primarily for the roof works and repairs and redecorations to the metal windows. Mr Martin said that he would consider whether uPVC replacement windows, where required, might be an economical option (as they might be installed from within individual flats) and thus reduce the cost of scaffolding.

24. Mr Martin accepted that the preferred contractor, Tatham & Gallagher might not be willing to hold to the tender price. He said that he might have to renegotiate and he was aware that in recent months prices had firmed 3%-5% .He proposed to try to hold them to the tender price and he said there was a contingency sum provided for which might be available to help offset any general price increase.
24. Mr Ahmadi also gave evidence. He said that the lessees he represented were the members of a residents' association which had been recognised by the previous freeholder. As such they felt that the present freeholder should also recognise the association and should have consulted with it on the choice of professional adviser to oversee the major works project. They were aggrieved that they had not been consulted over Mr Martin's appointment. Mr Ahmadi was not able to produce any documents or correspondence to support this assertion and he did not know if the residents' association had been formally recognised within the meaning of section 29 of the Act. Mr Ahmadi was unable to point to any statutory obligation on a landlord to consult with a recognised residents' association on the issue of appointment of professional advisers.
25. Mr Ahmadi said that he had spoken to two local surveyors and had explained the nature and scope of the project to them. Mr Ahmadi had not shown either of them a copy of the Specification for Repair Works because the copies he had were priced and he did not want them to be double minded as he put it. He wanted a new surveyor to start from scratch and he did not want them to see the landlord's specification.
26. One of the surveyors, Mr P De-Bique BSc (Hons) MCIQB visited the site and Mr Ahmadi discussed the project with him. Mr Ahmadi said that initially Mr De-Bique sought a fee of 8% of the contract sum but later he reduced this to 5%. Evidently this fee would include the s20 consultation process, tender process and contract administration.

27. Mr Ahmadi also spoke to another surveyor, a Mr Steve from Middlesex who was introduced to him by a local estate agent, Coopers. He spoke with Mr Steve on the telephone and explained the project to him. Mr Steve proposed a fee of £150 per hour to visit the site and prepare a specification of works – he estimated this would entail 2 hours work and 2 hours travel. Mr Steve proposed a fee of 10% of the contract sum to include the tender process. There was no discussion about s20 consultation process.
28. Mr Ahmadi said that he assumed that both of the surveyors he spoke to were chartered surveyors and had the same qualifications as Mr Martin, but he was not able to say if they were also registered CDM planning supervisors.

## **The Law**

### **Statutory provisions**

29. **Section 18(1)** of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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, improvements 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.
30. **Section 19(1)** of the Act provides that 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 are of a reasonable standard;
- and the amount payable shall be limited accordingly.

31. **Section 19(2)** of the Act provides that 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.
32. **Section 27A(3)** of the Act provides that an application may 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.


### **Findings and Reasons**

33. We find that the scope of works described in the Specification for Repairs Works prepared by Mr Martin is reasonable because we accept Mr Martin's evidence on this point, the specification is accepted by the lessees of flats 2,4, 6,7,8 and 9 and because it accords with the experience and expertise of members of the Tribunal and what they were able to see for themselves at the very helpful site visit.
34. However we do urge the Applicant to have an early discussion with Mr Martin about any plans it may have to construct new build on the roof of the present building. If such work is contemplated it would render nugatory a good deal of the roof repairs specified in the present plans and it would be unreasonable to put the present lessees to needless and substantial expense. Similarly we would urge a discussion about the possibility of replacement uPVC windows. Not only might there be

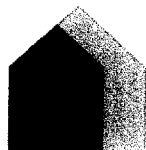
some scope for saving expense but there would be improvement to lessee's amenity and the overall visual look of the building.

35. The real issue in this case is the professional fees of 15% of the contract sum. We find 15% to be reasonable in the present case for several reasons. We find that Mr Martin gave his evidence in a clear and professional way without exaggeration. He answered in an open and helpful way. We find that Mr Martin is a witness in whom we can rely with confidence. Mr Martin's evidence struck a cord with the experience and expertise of the members of the Tribunal.
36. We accept that ordinarily professional fees for a project such as this will be in the range of 10%-15%, and for the basic contract administration a fee in the region of 12.5% would be at about the right level. However we do accept Mr Martin's evidence that professional input greater than the norm might well be required because of the complexities of the building and the uncertainty of what will be found when the roof is opened up.
37. Whilst we note Mr Ahmadi's evidence that local surveyors would be prepared to undertake the project at 5% and 10% of the contract price we did not see any evidence that the proposed services were on a like for like basis. Our experience warns us to be sceptical of a fee at 5% which seems to us to be so low that it raises concerns that corners might be cut or the level of supervision might be inadequate. Also we were not convinced that the proposed surveyors had fully appreciated all of the implications to the same extent as Mr Martin who, we find has been quite thorough in his preparation. Further we had not been provided with any CVs of the surveyors and we were not convinced that they had the same qualifications and experience as Mr Martin, especially as regards CDM compliance and health and safety issues. Accordingly we could not be satisfied that the comparisons were like for like.

38. We take into account that Mr Martin includes in the 15% proposed by him the cost of the preparation of the specification and the cost of the CDM planning supervisor duties which are often charged separately at around 2% of the contract price. Taking all the relevant factors into account and having regard to our expertise in these matters we have no hesitation in finding that 15% is within the range of professional fees that it would be reasonable for the Applicant to incur in respect of the proposed major works project.



.....  
John Hewitt  
Chairman  
30 May 2008



**Residential  
Property**  
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
Landlord and Tenant Act 1985 – Section 27A  
LON/00AE/LSC/2008/0042**

---

**Address** : **Cairfield Court, Cairfield Avenue, London  
NW2 7PP**

**Applicant** : **Strandview Limited**

**Respondent s** : **The Lessees of Cairfield Court**

**Date of Application:** **30 January 2008**

**Date of Hearing** : **22 May 2008**

**Date of Decision** : **30 May 2008**

**Date of Application  
for permission to  
appeal** : **18 June 2008**

**Date of Decision** : **15 July 2008**

**Tribunal** : **Mr John Hewitt** **Chairman**  
**Mr John Power** **MSc FRICS FCI Arb**  
**Ms Sue Wilby**

**Landlord**

**Tenants**

**DECISION**

## **Decision**

1. The decision of the Tribunal is that permission to appeal is refused.
2. The reasons for this decision are set out below.
3. The Respondents are reminded that in accordance with s175 of the Commonhold and Leasehold Reform Act 2002 the Respondents may make a further application for permission to appeal direct to the Lands Tribunal. Any such application is to be made the Lands Tribunal within 14 days of the date on which this decision to refuse permission to appeal was sent to the Respondents. See Rule 5C(2) of the Lands Tribunal Rules 1996 (as amended).

## **Background**

4. The substantive Decision was given in an application made pursuant to section 27A(3) in connection with works proposed to be carried out by the Applicant landlord. The nature and scope of works was not in issue. The only substantive point in issue was the reasonableness or otherwise of the professional fees proposed to be incurred by the landlord.
5. At the hearing the Tribunal listened carefully to the evidence of the landlord's surveyor as to the nature and scope of services to be provided and the fees he proposed to charge. The Tribunal were satisfied that he had a good grasp of the detail of the project and what was involved. At the hearing the Respondents and their representative had opportunity to call evidence and present an alternative professional team. The evidence presented was weak and in some respects vague. The Tribunal were not satisfied that the surveyors who were offering to supervise the proposed works had an adequate grasp of the nature and scope of the project.

6. Attached to the application for permission to appeal are three very brief emails which in effect simply say that typical fee rates for a £90,000 project are:

- 8.75% - but subject to sight of the scope of works
- 8% - of contract sum plus VAT
- 7%-8.5% - plus disbursements and VAT based on the final contract sum – to be reviewed on receipt of the contract documentation bundle.

There is no explanation given as to why this further evidence was not provided to the Tribunal in time for the hearing on 22 May 2008. It is clear from the emails that those quoting have no or little information about the nature and scope of the proposed works. There is little or no evidence about the experience and expertise of those quoting in relation to projects of the type in question. Further we are not persuaded that the fee quotes apparently offered are realistic and on a like for like basis to that prepared by the landlord's surveyor. We are not satisfied that they are put forward on a similar basis to the professional fee proposed by the landlords surveyor. There is nothing in the application for permission to appeal that causes us to conclude that our Decision dated 30 May 2008 was not correctly decided.

7. The Tribunal is satisfied that the ground of appeal, which does not raise any point of principle, has no real prospect of success and that there is no other compelling reason why an appeal should be heard.



John Hewitt  
Chairman  
15 July 2008