

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A AS AMENDED

Reference: LON/OOAG/LSC/2008/0580

Premises: Ground Floor Flat and Upper Maisonette,
36 Chalcot Road
London NW1 8LP

Applicant: Roderick Graham (Landlord)

Respondents: Gillian Allan (1) (Tenant – Ground Floor Flat)
Philip Mills (2) (Tenant – Upper Maisonette)

Appearances

For the Applicant: Mr S. Pettit of Counsel instructed by Johns and Sagger, Solicitors.

For the Respondents: Mr M. Buckpitt of Counsel instructed by Fosters LLP, Solicitors.

Date of application: 17th September 2008

Date of pre trial review: 10th February 2009

Postponed hearing and further directions: 23rd June 2009

Date of hearing: 17th September 2009

Members of the Leasehold Valuation Tribunal:

Miss S.J. Dowell BA (Hons) (Solicitor)

Mr K.M. Cartwright FRICS

Mrs J. Clark JP

Date of decision: 21st October 2009

Preliminary

1. This is an application dated 17th December 2008 for a determination under section 27A of the Landlord and Tenant Act 1985 as amended of the liability including reasonableness to pay of the Respondents to pay service charges for the years 2002/3, 2003/4, 2004/5, 2005/6 and 2006/7. At the hearing on 17th September 2009 Counsel for both parties requested that the application be limited to a determination of liability to pay services charges for buildings insurance from April 2002 to April 2008 inclusive and a determination as to the validity of the notice dated 14th October 1999 served pursuant to section 20 of the Landlord and Tenant Act 1985 ("the Act").
2. A pre trial review was held on 10th February 2009 when directions were issued and the hearing fixed for 23rd June 2009. This hearing was postponed and further directions were issued on 23rd June 2009.
3. 36 Chalcot Road, London NW1 is a terraced house which had been converted into three flats ("the building"). The Applicant is the freeholder of the building and the lessor in respect of the leases of the ground floor flat and the upper maisonette, having purchased the freehold in or about 1984. From about April 1971 until October 2005 the Applicant was also the lessee of the basement flat. The First Respondent is the lessee of the ground floor flat and the Second Respondent is the lessee of the upper maisonette.

The leases

4. The lease of the ground floor flat is dated 30th May 1979 and made between Marksglade Limited (1) and Arrowhurst Limited (2). The lease is for a term of 99 years from 25th December 1976 at a yearly rent of £50. The lease of the upper maisonette is dated 29th April 1977 and made between Marksglade Limited (1) and Anne Patricia Mills, Philip Stuart Mills and William Stuart Mills (2). The lease is for a term of 99 years from 25th December 1976 at a yearly rent of £75. The leases are in similar terms and it was agreed between Counsel that we should refer to the lease of the upper maisonette for purposes of this application.

Buildings insurance

5. The bundle of documents contained, at page 301, a schedule of buildings insurance premiums from 1996 to 12th May 2008 inclusive. However Counsel for the Applicant confirmed that a determination was sought only in respect of the years April 2002 to April 2008 inclusive. The dispute was in respect of liability for payment of these insurance premiums.

The law – Landlord and Tenant Act 1985 as amended

6. Section 18 – Meaning of “service charge” and “relevant costs”

- (1) “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 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.
- (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 for which the service charge is payable.

Section 19 – Limitation of service charges: reasonableness

- (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.

Section 27A – Liability to pay service charges: jurisdiction

- (1) An application may be made to a Leasehold Valuation Tribunal for a determination on 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) Sub section (1) applies whether or not any payment has been made.
- (3)
- (4) No application under sub section (1) may be made in respect of a matter which
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Relevant clauses of the lease

7. By clause 5(3) the lessor covenants
 - (a) “To insure in the joint names of the Lessor and the Lessee in the full value thereof the Demised Premises in an insurance office of repute against loss or damage by fire and all other normal comprehensive risks and such other risks as in the opinion of the Lessor are necessary to be insured again (herein referred to as “the Insured Risks”)”.
 - (b) “In the case of the destruction or damage of the Demised Premises by any of the Insured Risks to lay out any policy monies which may be received by the Lessor in rebuilding or reinstating the same with all convenient speed free of expense to the Lessee”.

8. By clause 3(f) the lessee covenants "At all times during the said term within fourteen days of the demand to pay and contribute a proportion of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto being such proportion as the rateable value of the Demised Premises bears to the total rateable value of all flats in the Building and to pay to the Lessor on the execution hereof the sum of FIFTY POUNDS (£50.00) to be held by the Lessor as a reserve fund out of which the Lessor may in the first instance pay the said costs expenses outgoings and matters".
9. Paragraph 1 of the Fourth Schedule states "The cost incurred by the Lessor in insuring the building for such amount and against such risks as the Lessor may deem advisable".
10. Paragraph 7 of the Fourth Schedule states "The cost to the Lessor of performing the Lessor's covenants in this Lease so far as the same are not set out in detail in this Schedule".

Evidence of Mr Graham

11. The bundle contained an undated and unsigned witness statement of the Applicant, Mr Graham who also gave oral evidence at the hearing.
12. Mr Graham told the tribunal that as he understood the lease the demised premises should be insured in the joint names of the freeholder and lessee, and the rest of the building in the freeholder's name alone. He accepted that the buildings insurance was not in that form as he had been told this was not possible by the insurance company which had been proposed by Mr Allan. Mr Graham's recollection was that this was some time ago following a fire which occurred in the basement of the building in 1990. Mr Allan had said the insurance should be in the joint names of the freeholder and lessee but the insurance company had told Mr Graham this was not possible because the lessees did not own the freehold. However the insurance company proposed by Mr Allan did say that they could insure in this manner by way of operative endorsements. However as Mr Graham already had such endorsements with

the current Eagle Star Insurance he did not see any reason to change the insurance company.

13. Mr Graham explained that he purchased the freehold in 1984 since when he had insured the building with Eagle Star and its successor Zurich with operative endorsements. He had kept up the insurance ever since 1984 in that form.
14. Mr Graham referred to a letter dated 8th April 2009 from Amanda Rathwell who currently, with her husband, owned the basement flat at 36 Chalcot Road. Mr and Mrs Rathwell had made an insurance claim in 2007. They had asked Mr Graham if they could deal with his insurance company directly to which he agreed. Mr and Mrs Rathwell were able to make a claim on the policy as interested parties which Mr Graham submitted had always been the case. Mr Graham relied on the second paragraph of the letter which stated "We have only just resolved the water damage to the flat and claims with Zurich Insurance Company".
15. On cross-examination Mr Graham was asked where all the paperwork was for the buildings insurance. He said he had handed over all the paperwork to his solicitors but in fact there was very little paperwork in connection with insurance which was usually the renewal notice, the receipt and the policy. The schedule was attached at the beginning when he first took out the insurance and he assumed it continued to run from the time he took on the freehold.
16. Mr Graham produced the current insurance policy from Zurich dated 28th May 2009 which showed the address of the property, the commencement date of 2nd May 2009 and listed the operative endorsements with the lessees' names and details of each flat.
17. Mr Graham stated that although the policy was a home owners policy the insurance company were fully aware that 36 Chalcot Road was not his home, indeed they visited him at Croftdown Road while he was living there. Mr Graham said that he had been assured that this insurance was valid by his insurance company since the early 1990s. Eagle Star had issued endorsements to cover the requirements of the lease and he had been assured by Eagle Star that the insurance fully complied with his covenant in the lease.

18. Mr Graham accepted that the home policy schedule at page 230 dated 2nd May 2008 did not mention the names of the lessees but he had understood that these operative endorsements continued from year to year.
19. Mr Graham said that when Zurich took over from Eagle Star he had been assured by Zurich that the endorsements remained valid unless they were altered by him. This assurance was given to him by both Eagle Star and Zurich by telephone but Mr Graham acknowledged he could not give the tribunal the names of the people that he spoke to and that he should have got this confirmation in writing but he did not do so.

The Applicant's submissions

20. The Applicant relied on copy letters sent to both lessees contained in the bundle from pages 4 to 26 inclusive. Counsel submitted that these letters constituted the demands for payment of the buildings insurance under the terms of the lease.
21. The buildings insurance documentation was contained in the bundle from pages 218 to 266D inclusive.
22. For 2002 the Applicant produced the renewal request from Eagle Star and the receipt acknowledgement. Mr Pettit submitted that although these documents did not show the address of the property the complete insurance documents in the bundle should be looked at as a whole.
23. For 2003 the renewal letter was available which showed the property address together with the conditions of the insurance and the receipt.
24. For 2004 the renewal request and receipt acknowledgement were produced.
25. By April 2005 the policy had been transferred to Zurich. The insurance documents were produced. The names of the lessees were not shown. However the address of the freehold building was shown together with a record that the basement flat was currently unoccupied. There was confirmation of payment of the insurance for 2005.

26. For 2006 there was documentary evidence that the renewal payment for the insurance had been made and that the policy was in place. Mr Pettit submitted that the insurance was of the same type as for 2005 and 2007 although the documentation was not available.
27. For 2007 the renewal request was produced and confirmation of payment.
28. For 2008 a renewal request and confirmation of payment were produced.
29. Mr Pettit submitted that the policies had been the same throughout the years in question and that the ambit of the policy in 2009 was the same as it always had been. Mr Pettit referred to a letter dated 19th May 2009 from Zurich (pages 522-3 in the bundle).
30. Mr Pettit referred to the obligations of both lessor and lessee in respect of insurance in the lease. Mr Pettit explained that Mr Graham was unable to insure either set of demised premises in the joint names of the lessor and lessee because this was not permitted by the insurance company. However the Applicant relied on the 2009 insurance documents. The Schedule clearly covered three flats and the occupiers of the basement flat had been able to make their own claim which had been honoured. The past policies had been in the same form continuously and the ambit of those policies was the same as that clearly set out in the 2009 document. There was no doubt that if during the relevant period the leaseholders had made claims they would have been honoured.
31. With regard to the wording of paragraph 1 of the Fourth Schedule and clause 5(3)(a) of the lease, Mr Pettit submitted that these did not have to be coterminous. He also relied on paragraph 7 of the Fourth Schedule and submitted that this was the mechanism by which the insurance costs could be recovered in any event. In his submission insurance costs could be recovered even if there was a breach of clause 5(3)(a) of the lease.

32. In answer to the allegation that the service charge demands had not been served on the relevant person i.e. Mr D. Allan who has held himself out as the person with whom the landlord should deal, notwithstanding that the registered lessee was Gillian Allan, Mr Graham produced copies of letters showing that the demands had been sent to Mr Allan both in Australia and to the flat at Chalcot Road.

The Respondents' case

33. The Respondents relied on witness statements of Dudley Allan dated 5th August 2009 and Philip Stuart Mills dated 6th August 2009.
34. Mr Buckpitt argued that the proper construction of the lease was that the lessor was obliged to insure in joint names. Reference to the cost of insuring the building was the cost of providing insurance for each flat (along with the building) which insurance must be in joint names. He submitted that the lessees only had to pay for valid insurance under the lease. The intention of the parties when entering into the lease must have been that if the demised premises were not insured in joint names then the lessees would not be liable to pay for insuring the building. The covenants should be construed in accordance with the landlord's obligations under the lease. It was a condition precedent that the landlord would fulfil his insuring obligations otherwise this covenant was meaningless.
35. Mr Buckpitt relied on a passage from *Woodfall* which supported his contention that insuring in one name was not insuring in both names.
36. In the alternative Mr Buckpitt argued that the buildings insurance was not valid because it had been effected under a "home owners" policy. Mr Buckpitt drew our attention to the fact that the renewal request for 2002 did not show the name of the property, that generally the insurance documentation was incomplete and inadequate, and that throughout the insurance was referred to as a "home ownership" policy notwithstanding that this was not the freeholder's home and was a building divided into three separate self-contained flats and common parts. There was no evidence that there were endorsements or even if there were that they reflected the lessees' interests in the building. Mr Graham could not confirm that the endorsements were on the

policy and had not produced schedules to the policy to prove the manner in which the building was insured.

37. Mr Buckpitt referred to the insurance documentation for 2003 and in particular the endorsement which reads,

“Your cover has been provided on the basis that your home:

- is your permanent place of residence and not unoccupied for more than 30 days;
- is occupied by you and your family;
- is in a good state of repair and will be maintained in this condition;
- has not been repaired for and is not showing signs of damage due to subsidence, ground heave or landslip;
- is not used for business, trade or professional purposes other than as administrative use;

unless previously agreed and accepted by us in writing.”

38. Mr Buckpitt submitted that the evidence was clear that these policies were home owners policies. Mr Graham had not produced a letter from Zurich saying the fact that it was a home owners policy did not prejudice the insurance. At paragraph 7 of the Respondents’ statements of case the Applicant had been required to provide documentary proof from the insurance company that:

- (i) the insurance related to this property; and
- (ii) the policy remained in force notwithstanding the fact that the insured did not reside in the property and that it was converted into flats which are held on long leases and occupied by other people other than the insured and/or his family.

This was not provided by the Applicant who merely relied on the letter dated 19th May 2009 from Zurich. However this letter did not deal with the position prior to the current policy.

39. The argument that a payment was made to the lessees of the basement flat was weak as no information had been given as to the details of the claim, who had made the claim and the payment or the basis of the payment.
40. Mr Buckpitt submitted that in the absence of a letter from Zurich confirming that the home owners policy covered a property converted into three self-contained flats and the common parts, the tribunal could not be satisfied that the lessees' interests were noted on the policy. This is what is required by the lease under clause 5(3)(a). The policy does not comply with that requirement and the sums are not payable. The Applicant is only entitled to payment of the buildings insurance if there is a valid policy in place – otherwise it is not the cost of insuring the building.
41. Further Mr Buckpitt submitted that Mr Allan, acting for Miss Allan the lessee of the ground floor flat, had not received the demands for 2003, 2004 and 2005 notwithstanding the evidence from Mr Graham that the demands were sent to both the Australian address of Mr Allan and to Chalcot Road.

Decision

42. Dealing first with the demands, we accept that the lessees are not liable to pay a service charge for buildings insurance unless demands have properly been made. Mr Philips took no point regarding demands and Miss Allan, through her father Mr Dudley Allan, claimed that she had not received the demands for 2003, 2004, and 2005. During this time Mr Allan's son Tim Allan lived at the property. Mr Graham gave evidence and produced copies of letters which had been sent to Mr D. Allan both at the Chalcot Road address and at his address in Western Australia. Even if the letters had not reached Mr Allan in Australia it would be reasonable to expect his son to pass on to him any correspondence which had arrived at the premises at 36 Chalcot Road. In any event the demands for these three years have now been produced some time ago and we determine that valid demands for the service charges in dispute for insurance have been made.
43. The tribunal must therefore determine whether, under the terms of the lease, the lessees are liable to pay for the insurance policy for the building which has been

effected by the freeholder. We accept Mr Graham's evidence that he was not able to effect the insurance in the exact form as required by clause 5(3)(a) of the lease.

44. The Respondents did not produce any independent evidence from an insurance broker or other expert that such insurance would be possible to implement.
45. The lease is badly drafted but our interpretation of the lease is that the obligation of the lessees to pay for buildings insurance is the buildings insurance effected by the lessor in accordance with his covenants.
46. If the lessor is not able to insure in precisely the form required by the lease nevertheless there can be no argument that it is the lessor's responsibility to insure the building and that the lessees are liable to contribute to the cost of this as covenanted in clause 3(f) and paragraph 1 of the Fourth Schedule.
47. However we accept that the Respondents' argument that the Applicant is only entitled to payment of the buildings insurance if this has been effected with a valid policy. This is implied under the terms of the lease and/or in any event relevant costs shall be taken into account in determining the amount of the service charge payable for a period only to the extent that they are reasonable incurred (section 19 of the Act). These costs are not reasonably incurred if they do not effect a valid policy of insurance.
48. We accept that the insurance which has been effected by the freeholder does relate to 36 Chalcot Road even if this is not spelt out on every piece of documentation that has been supplied to us. The reference numbers on the documentation are sufficient to be satisfied that the building is insured. However throughout the years in question the freeholder has insured this building under a "home owners" policy. The Applicant was not able to produce any written documentation to prove that the policy remained in force notwithstanding the fact that the insured did not reside in the property and that it was converted into flats which were held on long leases and occupied by people other than the insured and/or his family.

49. The only letter the Applicant was able to produce was the letter dated 19th May 2009 from Zurich. This letter commenced "Thank you for taking the time to write to us", however we were not provided with a copy of the letter sent by Mr Graham to Zurich and although there was reference to a complaint we not informed of the nature of the complaint.

50. The letter confirmed, inter alia,

- "This policy insures 36 Chalcot Road for Buildings, including extended accidental damage, for a rebuild cost of up to £663532.
- We are aware that all correspondence should be sent to 28 Croftsdown Road.
- The policy has a number of people shown as having interest in the property. These are shown under "Operative Endorsements" on the Home Policy Schedule.
- I'm only able to view the details of the policy back to 2007 as we no longer hold any of the Eagle Star records.

When we took over from Eagle Star, we agreed to continue providing cover under the terms of the contract you agreed with them. These details may not reflect the true circumstances now, which is why we wrote to you asking for additional information to make sure we were providing the correct level of cover."

The tribunal was not provided with the letter from Zurich referred to.

51. The Applicant relied on a letter from Annette Rathwell one of the lessees of the basement flat at 36 Chalcot Road dated 8th April 2009 which confirmed that Mr and Mrs Rathwell had resolved the water damage to the flat and the claims with Zurich Insurance Company. We attach no weight to that letter. Mrs Rathwell did not appear as a witness and we have no evidence as to the details of the water damage claim.

52. We were not supplied with the freeholder's application for buildings insurance. A contract of insurance is a contract of the utmost good faith and we can only conclude from the documentation which we have seen that the building at 36 Chalcot Road was not validly insured. The insurance documentation shows an assumption that this is the

insurance of a home. The insurance documentation which was produced for 2003 clearly states that cover has been provided on the basis that the building insured is the policy holder's permanent place of residence occupied by him and/or his family. There is no acknowledgement anywhere, until 2009, that the building is divided into three flats and let on long leases and occupied by people other than the policy holder and/or his family.

53. In the circumstances we determine that under the terms of the lease the Respondents are not liable to pay for the buildings insurance because the buildings insurance has not validly been effected, or in the alternative if the terms of the lease are wide enough to require payment of the buildings insurance premiums then we determine that these costs shall not be taken into account in determining the amount of the service charge payable for the relevant years because these costs have not been reasonably incurred.

Validity of notice dated 14th October 1999 – section 20 Landlord and Tenant Act 1985

54. The notice was dated 14th October 1999 and was drafted by solicitors for the Applicant landlord, Myers, Ebner and Deaner.
55. The Applicant served the notice on the Respondents on 14th October 1999. This notice related to external repairs and redecoration, damp proofing works and internal repairs. The works began in or about August 2002 and were completed in or about June 2003. On completion the cost of the works were certified to be:
- Exterior works - £18,241.88
 - Basement works - £6,461.36
 - Drainage works - £1,942.63
 - Additional works - £10,509.47
 - Professional fees - £3,271.79
 - Additional costs - £587.50
56. Between 2003 and 2006 the Applicant has made service charge demands but the Respondents have not made any payment towards the service charges for these works. Counsel for both parties requested that we make a determination in respect of the validity of the section 20 notice as a preliminary point.

The law - Limitation of service charges estimates and consultation: section 20 of the Landlord and Tenant Act 1985 as unamended ("the Act")

57. (1) where relevant costs incurred on the carrying out of any qualifying works exceeds the limits specified in sub section (3), the excess shall not be taken into account in determining the amount of the service charge unless the relevant requirements have been either –

- (a) complied with, or
- (b) dispensed by the court in accordance with sub section (9);

and the amount payable shall be limited accordingly.

(2) In sub section (1) "qualifying works", in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such charge.

(3) The limit is whichever is the greater of –

- (a) £25, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
- (b) £500, or such other amount as may be so prescribed.

For work done on or after 1st September 1988 the cost threshold is the greater of £1,000 or £50 multiplied by the number of tenants liable to pay the relevant service charge.

(4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants association are –

- (a) at least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
- (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.

- (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address in the United Kingdom to whom the observations may be sent and the date they are to be received.
 - (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
 - (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
- (5)
- (6)
- (7)
- (8) In this section “the tenants concerned” means all the landlord’s tenants who may be required under the terms of their leases to contribute to the cost of the works in question by the payment of service charges.
- (9) In proceedings relating to a service charge the court, may if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.

These consultation rules apply to any work done between 1st April 1986 and 30th October 2003. The leasehold valuation tribunal has no power to dispense with any of the requirements of consultation – this power is reserved to the county court.

The Applicant’s case

58. Mr Pettit referred the tribunal to pages 400-521 inclusive of the bundle which constituted the complete section 20 notice.
59. The notice was sent to the solicitors acting for the First Respondent. There was no evidence in the bundle to show how the notice was served on the Second Respondent.

60. Mr Pettit referred to page 402 of the bundle which set out the building works to be undertaken by the freeholder being external repairs and redecoration, £9,340, damp proofing works £5,432.60 and internal repairs £4,553.50 which were allocated according to the specific work done and liability of the lessees under the lease. Ms Allan's total share was shown as £6,855.31 and Mr Mills' total share as £9,266.99.
61. Mr Pettit told the tribunal that the original notice and supporting documentation was served in a paginated bundle but that the original paginated bundle was not available and it was not known in exactly what form the documentation was served.
62. However Mr Pettit submitted that section 20(4)(a) had been complied with as at least two estimates for the works had been obtained, one of them from a person wholly unconnected with the landlord and had been attached to the notice.
63. Estimates were provided from Ward Damp-proofing Limited and Protem for the damp proofing works. These were in the bundle at pages 404-414 and 500-513. With regard to the basement works, at page 415 there was a letter from Mr Simon Hands, a surveyor acting for the freeholder, setting out the three estimates for the works to the basement. In fact only two estimates were forwarded, one from Mr Arif at pages 417-422 and one from Carmelcrest at pages 519-521 and also at pages 471-472 (one page being missing). The quote of Arif for the external works was to be found at pages 423 and 424 and 427-429 of the bundle. The tender from Carmelcrest for the exterior repairs was at pages 512-516.
64. On the first page of the notice it was stated
- "I Roderick Graham (the landlord) require you within one month of the date of service of this Notice to provide me with your observations regarding the estimates and specifications in relation to repair works to be carried out at 36 and 36A Chalcot Road, the estimates and specifications being attached hereto for the repairs, redecorations, refurbishment and alterations at 36 and 36A Chalcot Road, as summarised in the letter of Simon Hands and Associates dated 19th May 1999, 16th July 1999 and 5th October

1999 as set out in the attachments. The landlord refers to his draft schedule of percentages as attached hereto.

.....

Dated this 14th Day of October 1999”

65. Mr Pettit submitted that the notice complied with the requirements of section 20(4). It was accompanied by two estimates for each set of works. The notice taken as a whole with Mr Hands' letters which were specifically referred to, describes the works and invites observations within one month of the date of the notice.
66. Mr Pettit conceded that the notice did not give a specific date but submitted that it was clear that the tenants had one month from 14th October 1999 to make their observations.
67. Miss Allan instructed her own surveyor, Mr Oakley, and there was considerable correspondence regarding the nature and the cost of the works. Mr Mills did not make any observations prior to the commencement of the works.
68. The time limit would have expired on 13th November 1999 assuming the notice was posted on 14th October 1999. Mr Pettit submitted that the tribunal should look at section 20(4)(c) and (d) together. The notice has a date on it and it would be quite obvious to the recipient the date by which observations must be received. This date would not be earlier than one month after the date the notice was given as required by section 20.
69. Mr Pettit emphasised that an estimate was not the same as a quote. A quote was a step towards a contract whereas an estimate did not have the same stature. This was a much looser requirement. All quotes have time limits and are more accurate than estimates. Mr Pettit accepted that these quotations which had been attached to the section 20 notice were not binding quotes but they were estimates within the meaning of section 20 and fulfilled the criteria of section 20(4)(a) as estimates. He accepted that the quotes were spent but submitted this did not invalidate them as estimates for the purposes of the consultation procedure.

Respondents' case

70. Mr Buckpitt submitted that the tenants must be informed in clear terms what the landlord proposed to do when a section 20 notice is served. The face of the notice must show what works are going to be done and who is going to do them.
71. Section 20(4)(b) envisages a separate notice to which estimates are attached. In this case there are three distinct sets of qualifying works. The notice itself should describe the works and invite observations on the works and the estimate.
72. Mr Buckpitt referred the tribunal to section 20(5) of the Act which relates to requirements in relation to such of the tenants as are represented by a recognised tenants association. In that case the notice is only required to describe "briefly" the works to be carried out. This is less than is required by section 20(4)(c).
73. Mr Buckpitt submitted that the notice did not describe the works as required by section 20(4)(c). He submitted that the Act required more than a general statement as contained on the face of the notice served by the landlord and that some particularity was required. He submitted that the list of works to be undertaken at page 402 of the bundle was not sufficient and in any event was not part of the notice itself. The landlord had failed to provide a description of the works.
74. Further the "estimates" relied on were quotations which had lapsed. It was difficult to understand exactly the nature of the works which were to be carried out and the estimates were not clear.
75. Section 20(4)(c) requires that the notice should invite observations on the works and estimates. Again Mr Buckpitt submitted that this notice did not comply with the requirements of the Act.
76. The last requirement was contained in section 20(4)(d). Mr Buckpitt submitted that this date had to be precise and exact and could be likened to an enfranchisement notice where there must be a date included. In this instance the date must be apparent to the tenant so that he or she knows the date by which they had to respond. Mr Buckpitt

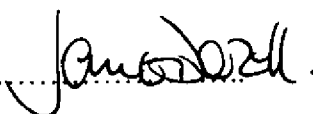
submitted that the tribunal had no discretion and that this was an absolute requirement. He relied on *Burman v. Mount Cooke* 2002 1EGL 61 to support his argument that the freeholder must do what the statute required.

Decision

77. We have been asked to determine as a preliminary point the validity of the section 20 notice. We do not deal here with service of the notice.
78. Section 20 of the Act sets out strict rules with which a landlord must comply. We accept that the rules are mandatory and that while compliance with the substance of the rules may be a relevant factor in any application for dispensation it is not relevant to the issue of compliance in the first instance. Indeed section 20(9) of the Act specifically gives the court power to dispense with all or any of the relevant requirements. If such a provision is necessary then clearly this is because in the first instance there must be compliance with the "relevant requirements" set out in section 20(4) of the Act.
79. It is therefore appropriate for us to consider each of the requirements and determine whether there has been compliance with that requirement.
80. Section 20(4)(a) "at least two estimates for the work shall be obtained, one of them from a person wholly unconnected with the landlord". The landlord has complied with this requirement and indeed this was not challenged.
81. Section 20(4)(b) "a notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants". As stated above we have not determined service of the notice. The notice was accompanied by documentation which in our opinion comes within the definition of "estimates". Clearly the quotations were spent and this was not challenged by Mr Pettit. In our opinion an estimate is a description of a document which contains an offer to carry out work at a price. The purpose of these estimates is to give the tenants a "ball park figure" for the cost of the works. The fact that these documents showed quotations which were spent does not invalidate

them as "estimates" because the requirement is to inform the lessees what work is to be done and how much it is likely to cost. The lessees do of course always have a remedy to make an application under section 27A of the Act for a determination in respect of liability including reasonableness of the cost of the works. The estimate does not have to be precise and in our opinion there was no requirement on the landlord to do more than he did.

82. Section 20(4)(b) "The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address in the United Kingdom of a person to whom the observations may be sent.". The manner in which these works were described was unsatisfactory but in our opinion this does not invalidate the notice. The information was available albeit in an unsatisfactory form and the letters from Mr Simon Hands were referred to and could be found in the documentation. Since none of the parties could provide us with an exact copy of the notice and supporting documentation, and we can only make our decision on the basis of the documentation in the form presented to us.
83. Section 20(4)(d) "The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b)". The notice does not include a date and states only that the lessees are required "within one month of the date of service of this notice to provide me with your observations....". In our opinion this does not comply with the mandatory requirements of the Act which are that a date should be shown on the face of the notice. Not only is there not a date included on the notice but the manner in which the date has been referred to is wholly unsatisfactory as the date of service of the notice might not be known to the recipient.
84. In conclusion we determine that the section 20 notice dated 14th October 1999 is not valid because it does not comply with the requirements of section 20(4)(c) and (d) of the Act in respect of the date to be stated on the notice.

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Jane Dowell

Chairman

Dated this 21st day of October 2009