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LON/00AA/LSC/2005/0244

**SUBSTITUTED DECISION IN ACCORDANCE WITH PARAGRAPH 18(7).  
LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS  
2003.**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985.  
(AS AMENDED)**

**Applicant:** Helmwall Limited

**Represented by:** Eversheds LLP

**Respondent:** West Smithfield Management Limited

**Represented by:** William Sturges Solicitors

**Re:** Parts 1/5 & 11/12 West Smithfield, London EC1A 9JR

**Inspection date:** 25 November 2005

**Hearing date:** 8 November 2005

**Appearances:** Mr A Smith of Counsel  
Ms Natasha M Woolman  
Mr Simon Burgess - Quantity Surveyor

**For the Applicants**

Mr G Healey of Counsel

**For the Respondent**

**Members of the Residential Property Tribunal Service:**

Mrs C A Lewis FCI Arb  
Mr J M Power MSc FRICS FCI Arb  
Mrs A Moss

**PARTS 5-11 & 11-12, WEST SMITHFIELD, LONDON EC1A 9JR**

**PRELIMINARY**

1. This was an application by the Lessor for the determination of the lessees liability to pay service charges under Section 27A of the Landlord and Tenant Act 1985. The only disputed issues were the reasonableness of the insurance premiums for the years commencing 30 January 2003, 2004 and 2005, and the apportionment of the premium between the residential and commercial parts of which the property forms part. The Respondent Lessee Company claims that the residential part should be separately insured.
2. The Respondent holds the property under a lease dated 5 June 2000, which was granted to Chatsworth Investments Ltd, and the provisions for the payment of the insurance are contained in the lease. The lease is to be read with a Deed of the same date and a lease and Deed of Variation dated 6 August 2002, both made between the original parties to the lease.
3. At the hearing the Applicant was represented by Mr A Smith of Counsel, and the Respondent by Mr G Healey of Counsel.

**INSPECTION**

4. The Tribunal visited the property on the 25 November. The building is L-shaped and of original Victorian age but substantial conversion works were carried out in the calendar year 2001. It is of five storeys plus basement. The ground floor has commercial use and the upper floors on the north side contain office accommodation. The remainder of the upper floors comprise 21 self-contained flats of various sizes plus common parts. There are connecting doors between the office and residential parts providing egress from one part through to the other to a staircase to the ground floor and street level.
5. Construction is of brick with render and other embellishments around the windows and openings. Roofs are part slated.

**THE HEARING**

6. During the course of the hearing a number of sections from the lease were referred to by the parties' representatives, and for convenience and ease of reference some of these are set out as follows:-

**The Building**

Under the Particulars, the Building is "ALL those premises know as 1/5 and 11/12 West Smithfield London EC1".

1.1.4 states "the building means the Building described in the Particulars (or any other building which may be built on the site of such building) and its

curtilage and together with all additions and alterations which may be carried out thereto during the term and all landlords fixtures and fittings from time to time in and about the same."

### **Service Charge Proportion**

Under the Particulars this is defined as thirty four point four per cent (34.4%) or such other proportion as the Landlord shall reasonably determine is appropriate in the event of alterations or additions to the Building.

The Second Schedule states, at 1.2, Service Charge, means the reasonable and proper costs and expenses of the Services listed under part 2 of this Schedule in accordance with the Service Charge Proportion.

The services include –

the provision of insurance cover which may from time to time be effected by the Landlord (and the obtaining of valuations by a qualified valuer as to the appropriate level of insurance cover or otherwise relating to such insurance in respect of the following matters or any of them;

4.1 any liability to the public or third parties (including liability pursuant to the Defective Premises Act 1972) by virtue of the Landlord's ownership or occupation of the building or any parts thereof; and

4.2 such other damage loss liability or claim which may arise in relation to any of the services matters or things herein mentioned and the employment of staff or others in connection therewith.

### **Insurance**

Section 2, the tenant covenants to pay "by way of additional rents the respective sums covenanted to be paid pursuant to sub-clause 3.6;

As to insurance

3.6.1 to pay to the Landlord on demand by way of additional rent in respect of each year during the Term;

(a) a proportionate part reasonably of the amount from time to time assessed by the Landlord's insurers as being payable by the Landlord by way of premium for keeping the Building (or in the event that the Building shall be insured with other premises belonging to the Landlord a proper and reasonable proportionate part of the total sum insured for an amount (estimated from time to time by the Landlord or the Landlord's Surveyor acting reasonably), reasonably necessary to cover the full costs of rebuilding or reinstating the Building against loss or damage by the Insured risks together with architects', surveyors' surveyors' engineers' and other professional fees etc.

4.3 The Landlord covenants "at all times to keep the Building insured (or procure that the same is kept insured) (subject to such excesses or limitations

as the Landlord's insurers may require) in the full costs of reinstatement against loss or damage by the Insured Risks together architects' surveyors' engineers and other professional fees in the name of the Landlord (with the Tenant's interest noted thereon) and to supply to the tenant sufficient particulars of such insurance."

4.4 Deals with the making good damage caused by Insured Risks, and states "And in case the insurance money shall be insufficient, the Landlord shall make up the deficiency out of the Landlord's own moneys";

#### PROVIDED THAT

4.4.1 The liability of the Landlord under this sub-clause is subject to and conditional upon the Tenant having previously paid to the Landlord all sums payable under this Lease in respect of insurance.

#### FIRST SCHEDULE

Part 1.6. The right in case of fire or similar emergency (in common with the Landlord and all other persons from time to time entitled to the like right) of egress for the Tenant and other occupiers and users of the premises on foot from the Premises and such other parts of the Building as the Tenant is entitled to use along and through the emergency exits shown coloured in blue on the plans attached hereto.

#### THE EVIDENCE

7. The Applicant's case, presented by Mr A Smith, was that the costs of insurance and the proportion payable by the Respondent were reasonable and had been reasonably incurred and that the costs of reinstatement were also reasonable. He said that the reinstatement value as to the residential part assessed by their Consultant surveyor, Mr Simon Burgess, of Daniel Watney Surveyors, who was present at the hearing, was about £4.6 million. This was a reasonable sum.

In response to questions, Mr Burgess referred to his witness statement which contained details of how he had calculated the reinstatement value.

8. The Respondent's case, presented by Mr Healey, was in summary:-
- (1) Whether the residential part of the building is sufficiently self-contained as to be insurable on its own and separate from the connected buildings;
  - (2) Whether the amount being charged for the insurance of the building is reasonable within the use and construction of the building and its various parts;
  - (3) If the building has to be insured as a whole unit, what percentage of the reasonable costs of the insurance should the Respondent be responsible for paying for;

- (4) If the building has to be insured as a whole unit, upon what basis the reinstatement value of the building has been calculated as the calculation provided by the Applicant is disputed.
9. Mr Healey largely relied on a witness statement of Mr I D Scharfer FRICS of Grant-Stanley, Mayfair, who was not present at the hearing. In his opinion the reinstatement value of the residential building was £3,613,000, including fees and VAT, for reconstruction.
10. He also claimed that the premiums payable by the residential tenants would be lower if the building was assessed separately as residential and commercial.

### **THE TRIBUNALS DETERMINATION**

11. In the opinion of the Tribunal, the calculations carried out by Mr Burgess as to the capital sum for which the whole of the building is to be insured in relation to the reinstatement value was in line with commonly accepted professional procedures, and they were also easily understood. This contrasted with the information provided in Mr Scharfer's witness statement on behalf of the Respondent, which gave a less detailed approach. The prime difference in respect of the calculations was in regard to the rates to be used, and the Tribunal using its own knowledge and experience were satisfied that the Applicant's figures were more realistic.
12. Regarding the Insurance Premium, we were told that there was no issue between the parties as to apportionment and the parties advised the Tribunal that the figure was 37.20% and this was confirmed in a joint statement on behalf of the parties attached at Appendix A. Moreover the Applicants said that they had paid the amounts for the 3 years to the Insurance Company, and they had used their best endeavours, with their brokers following proper practice. The Respondent said that a lower figure would be achieved if the residential section was assessed separately as this would result in a lower overall premium for the building. They did not produce any evidence in support of this claim.
13. The Tribunal have decided that within the terms of the lease, the "Building" is to be insured as a single entity covering commercial, residential and office use. The Respondent had failed to demonstrate how it would be cheaper to have each part assessed separately, and we could not, from our own experience, accept that if the building was dealt with in that way it would necessarily provide a lower figure. In fact in the Tribunal's opinion, overall the reverse was more likely. We therefore concluded that the sums to which the Applicant had paid as set out in Appendix A (divided by 37.20%) as claimed by the Applicant, is a reasonable sum, and accordingly the amounts claimed for insurance are both reasonable and payable.
14. Accordingly the Tribunal finds the amounts payable are
  - (1) 2002 – 2003 £14,217.87

- (2) 2003 – 2004 £20,143.95
- (3) 2004 – 2005 £16,473.73
- (4) The year 2005-2006 was also part of this application, and the Tribunal was advised that the amount would be £13,966.29 which they consider both reasonable and payable.

**15. Application under Section 20C of the Landlord and Tenant Act 1985**

The Tribunal has noted that the Respondent has not paid for insurance for at least 3 years. We find that if the Applicant has contractual rights under the terms of the lease to recover costs of proceedings, it would not be just and equitable to deny the Applicant those rights. We therefore conclude that it would not be appropriate to make an order under Section 20C.

**16. Application for Reimbursement of Fees**

In the light of their findings the Tribunal considers that it would be appropriate for the Respondent to reimburse the Applicant for £350, being the costs of the application and hearing.

**CHAIRMAN:**

CA Lewis

**DATE:**

26 January 2006

LVT/LON/00AA/LSC/2005/0244

**IN THE LONDON LEASEHOLD VALUATION TRIBUNAL  
APPLICATION UNDER SECTION 27A  
OF THE LANDLORD AND TENANT ACT 1985**

**APPLICANT: HELMWALL LIMITED**  
**RESPONDENTS: WEST SMITHFIELD MANAGEMENT LIMITED**  
**PROPERTY: PARTS OF 5-11 AND 11-12 WEST SMITHFIELD, LONDON  
EC1**

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**AGREED STATEMENT OF PARTIES**

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Further to the letter from the Tribunal in respect of the above matter dated 25 November 2005, the Applicant's solicitors are required to provide the Leasehold Valuation Tribunal with:-

- (A) An agreed statement, signed by both parties as to the amounts the landlord paid to the insurance company for the entire building over the 3 year period, January 2003 - January 2006.
- (B) The contribution for this sum which is sought from the tenant.

In accordance with the direction of the Tribunal, the Applicant confirms that it has paid in full the Whole Premiums for the Building for the period from 30 January 2002 to 29 January 2006 as set out in the table prepared by Daniel Watney at page 68 of the bundle for the hearing of this matter, a copy of which is attached to this statement as Appendix A.

The Applicant also confirms that the contributions sought from the tenant (inclusive of VAT) for each of the relevant years (including, for the avoidance of doubt, the year 30 January 2002

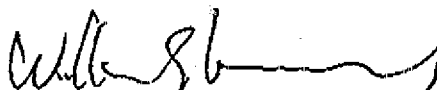
to 29 January 2003 for which there are also sums outstanding from the tenant) are as set out in the table attached to this statement at Appendix A under the column labelled "Apportioned Amount (Gross). The Respondent has made certain payments in respect of its contributions as follows:

Dates	Amount Due	Payment received
30/1/02 to 29/1/03	£12,807.66	Payment received in full
21/2/02 to 29/1/03	£1,410.21	No payment received - full amount outstanding
30/1/03 to 29/1/04	£20,143.95	Part payment received in the sum of £5943.04 (£14,200.91 remains outstanding)
30/1/04 to 29/1/05	£16,473.73	No payment received - full amount outstanding
30/1/05 to 29/1/06	£13,966.29	No payment received - full amount outstanding

*Eversheds LLP*

Eversheds LLP

On behalf of the Applicant



William Sturges

On behalf of the Respondent



**DANIEL Watney**

CHARTERED SURVEYORS

Part of 1/5 & 11/12 West Smithfield, London EC1

Insurance Charges payable in Connection with the Residential Premises

For the period from 30/1/02 to 29/1/06

Period	Whole Premium	Apportionment Percentage	Apportioned Amount (Net)	VAT	Apportioned Amount (Gross)
30/1/02 to 29/1/03	£29,301.45	37.20%	£10,900.14	£1,907.52	£12,807.66
21/2/02 to 29/1/03	£3,226.30	37.20%	£1,200.18	£210.03	£1,410.21
30/1/03 to 29/1/04	£46,085.46	37.20%	£17,143.79	£3,000.16	£20,143.95
30/1/04 to 29/1/05	£37,688.70	37.20%	£14,020.20	£2,453.53	£16,473.73
30/1/05 to 29/1/06	£31,952.18	37.20%	£11,886.21	£2,080.08	£13,966.29
<b>Total Payable for Period</b>	<b>£148,254.09</b>	<b>37.20%</b>	<b>£55,150.52</b>	<b>£9,651.32</b>	<b>£64,801.84</b>

APPENDIX A

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WILLIAM STURGES & CO

NO. 858 P. 4/4

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*WSE*  
*Everlets LLP*

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**LANDLORD & TENANT ACT 1985 - SECTION 27A**

**LEASEHOLD VALUATION TRIBUNALS (PROCEDURE)  
(ENGLAND) REGULATIONS 2003.**

Correction certificate under Regulation 18(7) of the above  
Regulations:

**Parts 1/5 & 11/12 West Smithfield, London EC1A 9JR**

As Chairman of the Leasehold Valuation Tribunal which decided  
the above mentioned case, I hereby correct some clerical  
mistakes in the Decision of the Tribunal dated 5 January 2006 and  
issued 6 January 2006, by substituting it with the attached  
Decision dated 26 January 2006

**Chairman:** Mrs C A Lewis FCI Arb

..... C A Lewis

**Date:**

..... 26 January 2006