

2004

**London Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. LON/00AC/LSC/2005/0270**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 27A and SECTION 20C of the LANDLORD AND  
TENANT ACT 1985**

**Property:** 48 Edgeworth Close, Hendon, London NW4 4HN

**Applicant:** Mrs Kay Perdikou

**Respondent:** Daejan Properties Limited (landlord)  
C/o Freshwater Property Management

**Appearances:** For the Applicant:  
Mrs Perdikou (in person)

For the Respondent:  
Mr M Shapiro, of GSC Solicitors  
Mr A E Solomon FRICS  
Area Manager, Freshwater Property Management

**Date of Application:** 22 September 2005

**Directions:** 14 October 2005

**First Hearing:** 5 December 2005

**Adjourned Hearing:** 19 January 2006

**Decision:** 21 February 2006

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr C Kane FRICS  
Mr A Ring

Case No. LON/00AC/LSC/2005/0270

48 Edgeworth Close, Hendon, London NW4 4HN

### **Application**

1. This was an Application dated 22 September 2005, made by Mrs Perdikou, the tenant of 48 Edgeworth Close, Hendon, London NW4 4HN, pursuant to Section 27A of the Landlord and Tenant Act 1985, for a determination on the payability of service charges for the accounting years ending 31 December 2000 to 2006 inclusive.

### **Background**

2. An oral Pre-Trial Review was held in London on 12 October 2005, and Directions were issued on 14 October. Mrs Perdikou, the Applicant, attended in person. Mr M Shapiro, of GSC Solicitors, appeared on behalf of the Respondent. The case was allocated to the fast track. The Directions provided for the Respondent to send certain documents and a Statement of Case to the Applicant, for Applicant to produce a Statement in reply relating to the matters in dispute, and for the Respondent to collate a Bundle of documents for use at the hearing. Both parties complied with the Directions.
3. A hearing took place on 5 December 2005. The Respondents had sent a copy of the Bundle by courier to the Tribunal office, but had only sent a copy to the Applicant by post, which she did not receive. The hearing was briefly adjourned for her to read the Respondent's Statement, but it became clear that she would be at a disadvantage if the hearing were to proceed. Therefore, the Tribunal decided to adjourn the hearing until 19 January 2006, to enable the Applicant to consider fully the contents of the Respondent's Statement and accompanying documents, and to give her the opportunity to seek legal advice if she so chose.

### **Jurisdiction**

4. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance, insurance or the landlord's costs of management, under the terms of the lease. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or if the works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

### **Lease**

5. The Tribunal had a copy of the lease of the property. The lease is an underlease dated 16 December 1977, and is for a term of 60 years from 25 March 1977 at a ground rent of £25 per year until 25 March 2008, and £50 per year thereafter.
6. The provisions relating to the calculation and payment of the service charge are to be found at Clause 2 of the lease. At Clause 2(2), the tenant is to pay to the landlord "on demand a sum equal to all such sums as the Lessor may from time to time pay for insuring and keeping insured the demised premises against loss or damage by fire storm and tempest ... in the full rebuilding cost". At Clause 2(9) the tenant is to pay "a rateable or due proportion" of the cost of repairing and maintaining the property.
7. Clause 4 requires the landlord, amongst other things, to keep the demised premises insured, and to perform the lessee's covenants under the head lease. The

Respondent was formerly the holder of the head lease, but acquired the freehold of the estate on 8 April 1982.

8. The service charge account was divided into two parts: estate costs, including insurance, for which the Applicant's proportion was 3.1%, and block costs, including the internal decoration and electrical works, for which the Applicant's proportion was 12.5%, reflecting the fact that there were 8 flats in the subject block.

#### **Issues in Dispute**

9. Mrs Perdikou disputed certain items in the service charge account for the accounting years ending 31 December 2003 to 2006 inclusive. At the Pre-Trial Review the following items were identified in particular: insurance for the each year; internal decoration costs and electrical costs for the years ending 31/03/04 and 31/03/06.

#### **Inspection**

10. The Tribunal members inspected the property before the first hearing, accompanied by Mrs Perdikou. It comprised a first floor flat in a low-rise purpose built block of 8 flats with 2 separate entrances numbered 41 to 44 and 45 to 48, built in the 1930's of brick construction under a pitched and tiled roof. The block is part of a small mixed-tenure estate of 6 similar blocks in a residential area in Hendon, North London. The estate is on a sloping site with lawned gardens front and rear. At the front are several large trees. The rear backs directly onto the M1 motorway and parallel railway.
11. The exterior of the subject block was in poor decorative condition. There was evidence of some re-pointing. The window frames were a mixture of original crital windows with some UPVC replacement. The Tribunal saw evidence of some subsidence works to the side of the block numbered 33 to 36. However, the concrete at the side and rear of that block did not appear to be new. There were some external cracks at the rear.
12. Internally the common parts to the subject block were in good decorative order with a new carpet. The four lights (two internal lights and two external) worked by sensor. The rear external light did not work. The padlock to the understairs cupboard had been forced open, causing damage. The ceiling outside Mrs Perdikou's flat had been replaced and decorated. The landing window was new. The back door had not been repainted externally.
13. The Tribunal also saw the common parts to the adjoining block numbered 41 to 44 which were also in good decorative order, but with vinyl flooring instead of carpet, and locks to the front and rear doors which were lacking on the rear door in the subject block.
14. The Tribunal saw the neighbouring property at 63 Edgeworth Close. This was a in modern small two storey council block with an external staircase, situated on level ground further away from the M1.

#### **Hearing**

15. The full hearing took place in London on 19 January 2006. It was attended by Mrs Perdikou, and Mr Shapiro and Mr Solomon on behalf of the Respondent landlord.

#### **Insurance**

16. The property was insured by the Respondent on a single policy for the estate. Copies of the Certificates for each year were provided. For the years in question, the premiums were as follows:

Year ending	Declared value	Buildings Insured	Sum	Premium
2000/01	£4,739,811	?		£14,164
2001/02	£4,929,403	£9,858,806		£16,045
2002/03	£5,274,461	£10,584,922		£22,318
2003/04	£5,590,929	£11,181,858		£25,795
2004/05	£5,870,475	£11,740,950		£11,255
2005/06	£6,281,408	£9,422,112		£12,010

17. Mrs Perdikou's case was that the property was over-insured. From the buildings sum insured for the current year, of £9,422,112, she calculated that each flat on the estate was insured for £294,441 rebuilding costs, which was excessive and unreasonable. She referred to a neighbour's property insurance contribution, which was £193.20. Her neighbour, whose landlord was Barnet Borough Council, had obtained a mortgage valuation survey, with estimated rebuilding costs at £84,000. She contended that the neighbour's flat was identical for insurance purposes, being a 2 bedroomed flat in a small block across the road, albeit with an external as opposed to internal staircase. She had no further information about the sum insured, extent of cover or any claims history.
18. In 1999, Mrs Perdikou obtained an alternative insurance quotation from Norwich Union. The premium quoted was £9,000 based on an all-risks cover. The subsidence cover was "subject to there having been no previous damage and no evidence of subsidence in the immediate vicinity". After approaching Freshwater, she received a fax stating: "with regard to your query regarding subsidence I have been advised that as far as our claims department is concerned they are not aware of any claims". She had been unable to obtain a current alternative competitive quotation because she could not afford the necessary professional valuation.
19. Mrs Perdikou also obtained a copy of a memo to Mr Solomon, the managing agent, dated 23/08/99, with a list of premiums, building sums insured and rate applied from 1988 to 1999. According to the memo, the sum insured rose from £2,536,300 to £4,557,551, the rate changed from .09 to .2475, and the premiums rose from £2282 in 1988 to £11280 (rounded) in 1999, with a large increase from 1991/92.
20. Mr Shapiro, for the Respondent, contended that Mrs Perdikou's evidence on her neighbour's insurance was not a true comparable, because of the lack of information on any claims history or the sum insured, and the fact that it was a local authority policy, probably on different terms, albeit with the same insurer. In particular, the claims history for the Edgeworth Close estate was significant. There had been several subsidence and water damage claims, listed in the Respondent's Statement. The most recent was a subsidence claim for work carried out in 1996 to block 33-36, settled by McClarens Toplis in 2001 for nearly £53,000. The fax sent to Mrs Perdikou did not mention this, possibly because it referred only to her block, where there had been no such claim. Because the policy covered the whole estate, the claims history would affect the proportion charged to her.
21. Mr Shapiro explained that the sharp increase in the premium from 2002 to 2003 was due to terrorism cover, which became payable per block of flats on advice from Pool Re, the government-backed body administering the terrorism insurance scheme, after the events of 9/11, which itself had an effect on insurance premiums generally. The premium was reduced in 2005 following negotiations with Zurich when the Respondent remarketed the estate for insurance purposes.
22. In response to questioning from the tribunal, Mr Solomon was unable to explain how the sum insured had been arrived at, when the rebuilding costs had last been professionally assessed, or how the premium was calculated. He also could not explain why the rebuilding costs had fallen, and the declared value risen, for the

current year, or why there was such a large difference between the day one declared value and rebuilding costs. He assumed the rebuilding costs must take into account the requirement to re-instate the block in the same style. He estimated that the current market value of the subject flat was in the region of £225,000.

### Internal Decorations

23. Internal decoration works to the common parts were carried out in the accounting year 2003/04. The ceiling on the landing outside Mrs Perdikou's flat was painted over but not renewed. Following her request, the Respondent agreed to renew the ceiling, and this was done in 2005. Mrs Perdikou contended that she had been charged twice for the work to the ceiling. She based this claim on the fact that she had been sent a Specification of Works including renewing defective plaster, so that the cost of this work had been included, even though it had not been done.
24. Mr Shapiro explained that the Respondent had served notice under Section 20 of the Landlord and Tenant Act 1985 on 12 March 2003, and that the chosen tender of Lambourn Contracts Ltd was based on a different Specification. This allowed only for making good and painting the ceiling, at a reduced cost. The Specification sent to Mrs Perdikou in error had been superseded. In addition, instead of non slip vinyl flooring, contract carpet was substituted at the same cost. The estimated total cost in the Section 20 notice was £7,945.91 including professional fees and VAT. This had been explained to Mrs Perdikou at a meeting with Mr Solomon and in correspondence.
25. In the event, the amount charged to the service charge account was the actual cost of £8,014. The additional cost was for redecorating the front door, which was not in the original estimate. The separate cost for renewing the ceiling was £881.25 inclusive of VAT, to be charged to the service charge account in the year ending 31 March 2006. In addition, Mr Solomon accepted that there had been some wasted costs incurred in painting the ceiling, and credited Mrs Perdikou's account with her proportion of £250, being half the cost, amounting to £40 (which also reflected compensation for the builders using her water and electricity). At the hearing, Mrs Perdikou accepted that she had not been charged twice for the ceiling works.
26. However, Mrs Perdikou still challenged the total cost of the internal decorations work as excessive. She relied on the cost of work carried out to the next block, which had been organised by the four tenants of that block with the landlord's approval. She produced an invoice for £4,000 (no VAT) from her neighbour's contractor, J Mangar of D&M Maintenance and Installations, and a quote for the work for £5010, also from J Mangar, but this time with a letter heading of D&M Management. Mrs Perdikou said that the neighbours had negotiated a discount and that £4,000 was the total price for a better job. When the S.20 Notice was served, Mrs Perdikou's then partner wrote to Freshwater asking them to get a quote from a local contractor known to them, Zorba. This was not done by either Freshwater or the Perdikous.
27. Mr Shapiro's case was that the Respondents were entitled to use one of their approved contractors, and under no obligation to seek a quote from Mrs Perdikou's preferred contractor, who may well not have met their requirements for insurance and health and safety matters. Three reputable contractors had tendered and the cheapest was chosen. The work was of a satisfactory standard and the cost was reasonable.

### Electrical Works

28. Major electrical works were carried out to the estate, completed in October 2002 at a total cost of approximately £7,500, reflected in the service charge accounts for the year ending 31 March 2003. Between August 2003 and March 2004, 5 invoices totalling £1,299 were incurred for further electrical works. Mrs Perdikou contended that these works should not have been necessary, because of the recent major works,

and that at least some of them should have been covered by guarantee. The external sensor controlled lighting had not been in working order for some time.

29. Mr Shapiro contended that the electrical work was needed for ongoing maintenance and repair, further and additional to the major works. In a letter from Mr Solomon, it was suggested that some damage may have been caused by vandalism, but this was just an assumption and was denied by Mrs Perdikou. There was little information available to explain why the additional works were necessary.

### Decision

#### **Insurance**

30. This was the most significant item, in terms of the level of the cost and the importance to Mrs Perdikou. The tribunal concluded that the insurance premium charged by the landlord was too high, taking into account the size, type and location of the property.
31. The tribunal found that the Respondent did not have a satisfactory explanation for the high level of buildings sum insured or the day one declared value. Mr Solomon could not produce a recent professional valuation, and had no evidence as to how the premium was calculated. The tribunal noted during its consideration that the buildings sum insured was double the declared value for each year in dispute except the most recent, 2005/06, when the sum insured was reduced from £11,740,950 in the previous year to £9,422,122 and the declared value increased from £5,870,475 to £6,281,408. There was no explanation for this change.
32. The tribunal had some sympathy with Mrs Perdikou's concern that the rough cost to rebuild her flat, £294,441, calculated by dividing the sum insured by the number of flats in the estate, was extremely high. There was nothing remarkable about the development to explain such a high cost, the design being straightforward. There was no element of the land value in the rebuilding costs, only the costs of rebuilding. In relation to the market value of the flat, which the tribunal put at around £175,000, the rebuild cost was much higher.
33. Although Mrs Perdikou's comparable insurance evidence related to a neighbouring property (which in the tribunal's view was not identical since it was more modern, of different design, on level ground, and further from the M1), it was still notable that the rebuilding cost was assessed as £84,000. There was a considerable discrepancy between this amount and £294,441. It was understandable that Mrs Perdikou had been unable to afford an alternative quotation based on a professional valuation.
34. The tribunal accepted that Mrs Perdikou's comparable was flawed, in that the claims history and other details of that policy were unknown, and the landlord was a local authority rather than a private company. The tribunal also accepted that the insurance for the subject had been affected by terrorism cover required for flats, the hardening of the insurance market generally in 2001 to 2004, and the history of subsidence claims. However, these factors did not fully explain the high premium to the tribunal's satisfaction.
35. The tribunal therefore decided, using its experience and judgment, that it would be fair and reasonable, in view of the age, location and character of the property, to reduce the recoverable insurance premiums for the years in question by 20%.

#### **Internal Decoration**

36. It was clear to the tribunal from the papers that Mrs Perdikou had not been double charged for the repair and decoration of the landing ceiling outside her flat. She conceded this at the hearing. In the tribunal's view, the position had been adequately explained to her, and she could reasonably have been expected to understand the

point earlier. In addition, Mr Solomon's action in crediting Mrs Perdikou's service charge account with her proportion of £250 of wasted costs for the year ending 31 March 2003 was reasonable.

37. In relation to the total cost of the decoration works, £6,243 plus VAT, the tribunal concluded that these were reasonable and that the works themselves were of a reasonable standard. The Respondent was entitled to choose contractors from an approved list, which met its requirements in terms of insurance and health and safety as well as quality of work. Three competitive tenders were obtained and the lowest quote chosen. There was no obligation for it to obtain a tender from Zorba. Mrs Perdikou suggested this contractor, but did not obtain her own alternative quote.
38. The tribunal attached little weight to the invoice provided by Mrs Perdikou from the contractor who carried out similar works to the adjoining block. The estimate was not like-for-like, in that it did not include the flooring. The Respondent's Specification allowed £1,800 for contract carpeting. Even though Mrs Perdikou's preference was for vinyl flooring, the Respondent was entitled to decide. It was reasonable to include professional fees and supervision costs. Mr Solomon had attempted to answer Mrs Perdikou's queries even though she was not satisfied by this.
39. The tribunal therefore approved the total cost of the internal decoration works of £8,014 as reasonable and payable, Mrs Perdikou's proportion being 12.5% at £1,001.75.

#### **Electrical Works**

40. The tribunal considered each of the invoices supplied by the Respondent. In general it concluded that in view of the major electrical works completed in October 2002, further repairs so soon afterwards should not have been necessary. For example, it should be possible to rely on the emergency lighting for some years after a major overhaul. Any problems should either be covered by guarantee, or referred back to the original contractor as a complaint. The tribunal accepted Mrs Perdikou's evidence that there had been no vandalism to explain the external light failure. Mr Shapiro's statement that the repairs were part of ongoing maintenance was not specific and did not explain why these were necessary.
41. On this basis, the tribunal disallowed the following: the first invoice of £242.70 for a visit dated 21/08/03 as this should have been covered by guarantee, being within a one year guarantee period; the second invoice of £348.45 for visits on 11/12/03 and 12/12/03 for "repair works to faulty lighting" as the lighting should not have been faulty at that stage; the third and fourth invoices of £244.75 and £379.65 for testing light fittings "beyond repair" and installing emergency lighting.
42. The tribunal allowed the final invoice of £82.84 for visiting the property to restore lighting on 30/03/04. It was not unreasonable for the Respondent to send a qualified electrician where access to the meter cupboard was required in the interests of safety.

#### **Section 20C**

43. Mrs Perdikou sought an order pursuant to Section 20C of the 1985 Act that the costs incurred by the landlord in connection with the proceedings before the tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant. The Act provides that the tribunal may make such an order as it considers is just and equitable in the circumstances.
44. The tribunal took the view that the lease provisions did not entitle the landlord to recover its legal costs through the service charge. However, in the event that another forum might take a different view, the tribunal considered the application. Ms Perdikou had been largely successful in relation to the most significant element of the

application, namely, the insurance, and also in relation to the electrical works. It would therefore be just and equitable to make the order.

### Order

45. It is therefore ordered that the amounts payable by way of service charges by the Applicant in relation to the disputed charges are as follows:

#### **Insurance**

Year	Insurance Cost	3.1% payable by no.48
2000/01	£11,331	£351.27
2001/02	£12,836	£397.92
2002/03	£17,855	£553.51
2003/04	£20,636	£639.71
2004/05	£ 8,980	£278.38
2005/06	£ 9,608	£297.85

#### **Internal Decorations**

Year	Cost of Works	12.5% payable by no.48
2002/03	£8,014	£1,001.75

#### **Electrical Works**

Year	Cost of Works	12.5% payable by no.48
2003/04	£82.84	£10.35

Dated 21 February 2006



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Ms J A Talbot  
Chairman