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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property: Bakers Court, Queens Road, Brentwood, Essex CM14 4FP

Applicant(s):

Lisa Nelson	Flat 1
Paola Moody & Stephen Driscoll	Flat 3
Gavin Dudley	Flat 5
Joanna Bull	Flat 7
Andy Whitecross	Flat 8
Alan Fenwick	Flat 10
Robert Armstrong	Flat 11

Each Applicant save Mr Fenwick is an owner-occupier

Respondent(s): Refrose Properties Plc (landlord)

Case number: CAM/22UD/LSC/2007/0003

Date of Application: 6 December 2006

Date of Hearing: 31 May 2007

Present at the hearing were –

For Landlord: Mr Aris Savvides (Director)

For Applicants: Robert Armstrong
Lisa Nelson
Joanna Bull
Andy Whitecross

Type of Application: Landlord & Tenant Act 1985 sections 27A and 20C

Tribunal Members: Mr G M Jones (Chairman)
Mr R Marshall FRICS
Mr R Rehahn

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Bakers Court, Queens Road, Brentwood, Essex CM14 4FP
CAM/22UD/LSC/2007/0003

FINAL ORDER

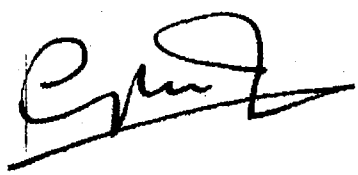
1. The Tribunal determines the sums payable by the Applicants for services provided by the Respondent landlord at Bakers Court, Queens Road, Brentwood, Essex shall be as set out in Part 2 of the Schedule hereto.

2. The parties have permission to apply within 14 days after service of this Order upon them for a review of the issues as to costs and reimbursement of fees. Such application must be accompanied by a bundle containing all relevant correspondence and any written submissions the parties may wish to make on those issues.

3. In default of such application the following Orders shall have effect:

   a. The Tribunal orders that any costs incurred by the Respondent in connection with this Application shall not be added to any service charge account for Bakers Court.
   b. The Tribunal orders the Respondent to repay to Mr Robert Armstrong as the Applicants' representative the Application fee of £350.00 and the hearing fee of £150.00.

4. The parties have permission to apply within 8 weeks after service upon them of this Order for a determination of the account balances as between the landlord and each individual tenant-applicant.



Geraint M Jones MA LLM (Cantab)
Chairman
19 June 2007

5. REASONS FOR DECISION

0. BACKGROUND

The Property

0.1 The subject property is a block of 3 one-bedroom (Flats 5, 8 and 10) and 8 two-bedroom flats on five floors, situated between the railway station and the town centre on the busy B186. It has gardens front and rear, an archway under the building leading through the back garden to two garage blocks and three car ports. The site slopes in two directions; generally downwards from the road and to the right when looking from the road. Flat 1 (the basement flat) is at ground level at the rear and has a private terrace. Flats 2 and 3 are effectively at ground floor level at the front. Above are flats 3, 4 and 5 (2nd floor); flats 6, 7 and 8 (3rd floor); and flats 10 and 11 4th floor). The communal front entrance has a phone entry system. The rear garden door (at basement level), gives access to a bin storage area. Eight of the flats are let each with a small lock-up single garage and three with a single car port. There is room to park two or three additional cars along the driveway.

0.2 The block was built in 1987-8. It is a solidly built of yellow brick with a pitched tiled roof. Front and rear entrance doors are of varnished wood (the rear door being in poor decorative order). Windows are brown-framed (either UPVC or coated aluminium) and double glazed. On the top floor are some projecting wooden features containing windows. The communal hallways and stairwells have bare brick walls, industrial style carpeting, artexed ceilings and hard wood banisters. There are low energy electric light fittings, and electric storage heaters at basement and top floor levels. Altogether, it is quite an attractive block, designed for low maintenance. Meter cupboards on the outside of the building are, however, not all secure.

0.3 Much of the frontage is taken up with the driveway and a single visitor's parking bay. There are small low-maintenance planted areas, maintained to a reasonable standard, though in need of weeding at the time of inspection. The back garden comprises a modest area of lawn; a hedge separating the communal garden from the terrace of Flat 1 and modest areas of planting including a raised shrubbery. There are two large old trees and a maple about 10 years old. At the time of inspection the lawn was badly in need of cutting. The shrubbery was badly overgrown with bramble and contained some dead or dying shrubs. The flank boundary fence behind the shrubbery (which appears to belong to the property) was in a state of collapse. Generally, it looked a mess. The rear fence and the flank fence on the other (driveway) side were in reasonable condition; it appears that these belong to neighbours.

0.4 The garages are of brick construction with up-and-over doors and felted roofs. The driveway and garage yard are of tarmac. The driveway and the surface of the garage yard are badly in need of repair and the garage blocks themselves are badly in need of exterior decoration. Ivy is growing profusely over the roof of the rearmost block and is likely to damage the fabric of the structure (if this has not already occurred) unless severely cut back. The boundary flank wall of the garage yard is a retaining wall and is leaning, probably as a result of the raised soil level (about a metre) on the other side.

The Lease

0.5 The sample lease (Flat 11 and Garage 11) was granted by Bakers of Danbury Ltd to Mr Armstrong on 25 August 1988. It is for a term of 99 years from 19 February 1988 at a modest ground rent. The tenant covenants to repair the demised premises save insofar as the landlord is responsible for repair. The tenant is not to insure. The landlord is to insure the property with a reputable insurance office or at Lloyds for at least the full rebuilding cost plus an appropriate percentage for professional fees and three years' loss of rent.

0.6 The landlord also covenants to repair the "roof outside main structure and foundations"; decorate outside once every three years; repair decorate and furnish, heat and light the common parts; repair and maintain boundary walls and fences and common service media; maintain the grounds; provide reasonable facilities for security and the display of occupiers' names and locations; and provide facilities for rubbish disposal. The landlord is entitled to engage the services of whatever employees, agents, contractors, consultants and advisers the landlord (acting reasonably) considers necessary.

0.7 Somewhat unusually, the repairing obligations on either side do not extend to insured risks, unless the insurers refuse to pay by reason of some act or default on the part of the person liable to repair. Presumably this is based on the assumption that any repairs covered by insurance will be funded by insurance monies, though this is not expressly stated. Indeed, there is no express obligation to utilise insurance monies to repair or reinstate, though that is probably to be implied.

0.8 Under the provisions of the Third Schedule, the tenant is to pay (by way of a service charge to be treated as further rent) one eleventh of the landlord's costs of carrying out its obligations under the lease, including the costs of borrowing money for that purpose. The landlord is to provide annual service charge statements certified by a chartered accountant. For this purpose, the accounting year is to end on 31 March. The landlord is entitled to levy in advance an interim half-yearly service charge, any final balance to be paid by the tenant or refunded by the landlord (as the case may be) after publication of the final service charge statement for that year. If the tenant is late paying, the landlord is entitled to interest at 4% per annum above Barclays Bank base rate on any outstanding sums that have been lawfully demanded. There is no provision for a reserve or sinking fund.

The Landlord

0.9 The current landlord is a property company whose registered office was formerly at 549 Green Lanes, London N8. It purchased Bakers Court in 1992. The company owns a lot of properties, which it manages itself. It appears that the controlling shareholder is Mr Aris Savvides, who is also one of the directors. According to Mr Savvides, he is semi-retired. The company and an associated company were by 2002 being mainly run by his son-in-law Constandino ("Dino") Savva. The associated company owned the offices in Green Lanes. In 2004, Mr Savva separated from Mr Savvides' daughter. Mr Savva then agreed, without due authority, to sell the associated company, as a result of which Mr Savvides had to come to an arrangement with the prospective purchaser in order to avoid litigation.

0.10 Mr Savvides acquired new offices at Hollies House, 230 High Street, Potters Bar and engaged the services of Mr John Andrews to run the property company on a consultancy basis. As far as the Tribunal could understand, Mr Andrews was also running an insurance brokerage, A S Insurance Brokers Ltd, owned by the Savvides family. As Mr Savvides told the Tribunal, he stopped going to the office in 2001 at the request of his son-in-law, who said he needed freedom to prove that he could run the company. Mrs Savvides continued to attend the office regularly until the separation in 2004. Mr & Mrs Savvides are not on good terms, having originally fallen out over the issue of Mr Savva's involvement in the business. Mrs Savvides had a controlling interest in A S Insurance Brokers Ltd which (for unexplained reasons of her own) she transferred to Mr Andrews. That company should be paying rent for Hollies House but has not paid for more than a year. When Mr Andrews stopped paying rent, Mr Savvides stopped paying management fees.

0.11 Mr Savvides told the Tribunal that he is now attempting to run the property company himself. The company's registered office may have been at Hollies House for a short time but is now at his home address (where his wife also lives). Mr Savvides became aware of the tenants' application to the Tribunal after the adjournment of the original hearing fixed for 24 April 2007. We shall return to the subsequent sequence of events later in these Reasons. Mr Savvides said he is now keen to sort out the problems at Bakers Court. He would be willing allow the tenants to manage the block themselves and would consider a sale of the freehold.

1. THE DISPUTE AND THE ISSUES

1.1 The trial bundle contains some correspondence relating to fairly major high level works carried out in 2002-3; the Tribunal has been asked to adjudicate upon that service charge year. However, the principal issues before the Tribunal relate to the subsequent service charge years 2003-7 and appear to have begun at about the time when Mr Savva fell out with his wife. The Applicants do not dispute the insurance costs but do challenge all other aspects of the service charges.

1.2 An unusual aspect of the case has been the total failure of the landlord to comply with directions orders or provide any of the relevant information or documentation which is not otherwise available to tenants. Mr Savvides assures the Tribunal that this is the fault of Mr Andrews, who has all the relevant files. He (Mr Savvides) was unable to speak to Mr Andrews (who has not recently been attending at his office) or to gain access to Hollies House (to which he had no key) or to obtain any of the relevant documentation. He asked for an adjournment in order to prepare himself to deal with the Application. He believes that, given time, he will be able to gain access to the relevant files and deal properly with the Application.

1.3 Unsurprisingly, the Applicants resisted the request for an adjournment. They were ready to proceed on 24 April 2007, the original hearing date which was lost because the Chairman was unfortunately (and at the last minute) unable to attend. They argued that the landlord company had had ample time to prepare and it would be unjust to the tenants to delay the hearing any longer.

1.4 The Tribunal's first task was to consider whether to adjourn the hearing. Having decided (for reasons which are set out below) to proceed, the Tribunal then had to consider what services the landlord had, in fact, provided to the tenants under the terms of the leases for the service charge periods 2002-7; whether and to what extent those services were of a reasonable standard; what costs were reasonably incurred in the provision of those services; and what sums were payable by the tenants for those services.

2. THE ADJOURNMENT ISSUE

2.1 Although the account given by Mr Savvides was somewhat confused, in the end there was no significant dispute as regards the relevant facts. The Application was issued on 8 December 2006 and was served by post on the landlord at Hollies House, this being the address given by Mr Andrews in recent correspondence as the registered office. Directions were issued on 5 March 2007. The parties were consulted by letter about availability and a hearing date fixed for 24 April 2007. A copy of the trial bundle was duly served. The Applicants attended but there was no attendance on behalf of the landlord. As has been noted, it was necessary to adjourn the hearing.

2.2 The same day Tribunal Clerk Mark Allbut attempted to contact the landlord by telephone. As a result, he spoke to Mr Savvides. Mr Allbut ascertained the availability of Mr Savvides who asked that all future correspondence should be sent to his home address. In due course, Mr Allbut sent notice of the adjourned hearing date to that address, explaining that all correspondence and documents had until then been sent to Hollies House but there had been no responses from the landlord company. Upon receipt of the notice, Mr Savvides spoke to Mr Andrews, who said he knew nothing of any Application and had received no papers from the Tribunal; he would contact the Tribunal. Mr Savvides was reassured and left the matter in Mr Andrews' hands.

2.3 About a week before the new hearing date, Mr Savvides saw Mr Andrews at Hollies House and asked him (*inter alia*) about the case. He said that, if Mr Andrews was not attending the hearing, he would attend himself. Mr Andrews said he would deal with it. Mr Savvides was then unable to contact Mr Andrews until the day before the hearing (30 May 2007). The office was closed for several days and he was unable to gain access. Mr Savvides became concerned as to whether Mr Andrews was taking the necessary steps to defend the Application.

2.4 At about 3.55 pm on 30 May, being unable to contact Mr Andrews, Mr Savvides spoke to Jenna Peck at the Tribunal Office. She was due to finish work at 4.00 pm. She told him that she could not grant an adjournment and that all he could do was to attend before the Tribunal and ask for an adjournment. Mr Savvides then managed to contact Mr Andrews by mobile phone. Mr Andrews said it would be difficult to get the Bakers Court files from the office and come to Brentwood. Mr Savvides had since formed the view that Mr Andrews was merely seeking to put him off. He told the Tribunal that he now suspects that Mr Andrews is running away from his responsibilities, including his responsibilities to the landlord company.

2.5 Mr Savvides said he was not currently in a position to represent the interests of the company but he believed that, given time, he would be able to gain access to the relevant files and deal properly with the Application.

2.6 The Tribunal considered that, in deciding whether to grant an adjournment, the principal considerations were the potential injustice to the landlord if no adjournment were granted; the injustice to the Applicants if there was further delay by reason of an adjournment; and the general interests of justice in ensuring that the Application was dealt with reasonably expeditiously. The Tribunal also had regard to the apparent merits of the case; the resources available to the parties; the time and expense likely to have been incurred by the Applicants (and potentially wasted); and the sums at stake.

2.7 The Tribunal noted that, at all material times between the issue date and 30 May 2007, the landlord company was employing Mr Andrews as its agent. The Application was served at the last known address of the company, which was the correct address at that time. With the benefit of hindsight, Mr Savvides clearly took the view that Mr Andrews' assertion that he knew nothing about the matter was not to be trusted. There was no evidence of any procedural error or any disruptive factor that might have led to the correspondence sent by the Tribunal to Hollies House going astray.

2.8 The Tribunal considered it very unlikely that at least some of the correspondence from the Tribunal Office did not reach Mr Andrews and therefore concluded that the Application did come to the attention of Mr Andrews prior to 24 April 2007. He was certainly aware of it after speaking to Mr Savvides. It appears that Mr Andrews had no intention of contacting the Tribunal or dealing with the Application; certainly there is no evidence that he ever did so. Mr Savvides did not, as he might have done, take the matter into his own hands until 30 May 2007. On the Applicants' case, they had serious grievances against the landlord. They had complied with the directions order and had attended on two occasions ready to proceed.

2.9 The Tribunal considered that the landlord's reasons for not being ready to deal with the application were inadequate. The landlord company is a substantial company with ample financial resources to ensure that litigation is properly dealt with. While having sympathy with the personal difficulties of Mr Savvides, the Tribunal felt that he had not taken adequate steps to ensure that the Application was properly dealt with. He had known about the Application since at least 24 April 2007. At that stage, it must have been obvious that urgent action was required. Mr Savvides had ample opportunity to take the necessary steps but chose to leave it to Mr Andrews. In any event, it was not his personal state of knowledge that was important; the issue was whether the company was in a position to deal with the matter.

2.10 A company can, of course, act only through its officers, staff and agents. The Tribunal was satisfied that the company as a whole was in a position to deal with the Application but had unreasonably failed to do so. If the hearing was adjourned, there would be unfair prejudice to the Applicants by way of delay and wasted time and effort. The balance of justice strongly favoured the Applicants. Accordingly, the application to adjourn was refused.

3. THE EVIDENCE

3.1 The Chairman explained the basic legal principles to the parties. Mr Savvides was allowed time to read the trial bundle and an opportunity to negotiate with the Applicants. He attended the hearing and asked such questions and made such comments as he could. Nevertheless, it was inevitable that the bulk of the evidence came from the Applicants. The Tribunal was handicapped by the landlord's failure to produce the usual documentary evidence. Nevertheless, a clear picture emerged. In the absence of Mr Andrews, it is doubtful whether Mr Savvides, who had no personal knowledge of the issues, could have added much, however long he studied the files. The Tribunal will deal with the issues according to the categories of services, rather than year by year.

Insurance

3.2 The Applicants did not complain of the cost of insurance. Indeed, in the experience of the Tribunal, the insurance costs appeared reasonable for the level of cover provided. It was impossible to ascertain whether the level of cover was adequate as regards reinstatement costs, a matter which the Applicants may wish to investigate. The Tribunal allowed the insurance costs as claimed; no more need be said about insurance.

Garden maintenance

3.3 According to the Applicants the garden was kept in reasonable order until about November 2004, the end of the 2004 growing season. Thereafter very little was done until August 2006, though there was evidence of some activity from time to time. In August 2006, by which time the gardens were very overgrown, a builder was employed to tidy it up. His men butchered the shrubs, which is the reason why some shrubs are now dead or dying. Ivy growing up the flank wall of the block was cut at ground level and successfully killed but was not removed. Since August 2006, there have been some signs of irregular activity. However, the gardens have once again become overgrown and in need of serious attention.

Maintenance and repair

3.4 In 2002-3 M L T Brindle Roofing Contractors gave an estimate of £7.665.00 + VAT (a total of £9,006.38) for necessary work to the gutter, down pipes, fascias and soffits and for decoration of the top floor windows (including the protruding wooden features on the front elevation). The work was duly done and no complaint is made as regards its cost or the quality of work. It is difficult to be sure what was the amount of the final invoice. However, it appears that the sum charged to the tenants was £7,602.53 inc. VAT. An accumulated fund of £2,108.00 was held on account, which was put towards this cost, the balance being added to the service charge account.

3.5 Mr Armstrong, the leading Applicant, took advice from "Lease" about this item of work. He was advised about the need for competitive tenders and the legal consultation requirements. It was clear that there had been no competitive tendering process and no consultation. In principle, the restrictions upon recovery set out in section 20 if the Landlord & Tenant Act 1985 would apply unless the landlord were given dispensation under section 20ZA. However, the Applicants did not seriously complain of any prejudice arising out of the procedural failure and did not seriously challenge the sum claimed.

3.6 Very little other work appears to have been undertaken since. In 2005-6 there was some work to the entry phone system (not entirely successful) and the replacement of one external light fitting. In 2006-7 the ceilings of the hallways and stairwells were painted. The Applicants were aware of no other activity. Nevertheless, there were substantial claims under this heading every year. If any other work had been done, there did not appear to have been any benefit to the tenants. As regards the work the Applicants were aware of, they raised the issue whether the costs charged to tenants were in fact incurred and, if so, whether they were reasonably incurred.

Cleaning of common parts

3.7 The Applicants did not dispute that cleaning was carried out to the common parts up to 2002-3 or thereabouts. Their complaint is that virtually nothing appears to have been done by the landlord since. They made written complaints but received no significant response. In November 2006, Mr Andrews admitted that the cleaning contract had fallen by the wayside and claimed that he was attempting to make alternative arrangements. At one stage he claimed to have made a substantial payment to the owner of Flat 2 (who was not known to the Applicants). But, as far as the Applicants could see, nothing was done except what they did themselves. They had to replace broken light bulbs, which they had done. Mr Whitecross (Flat 8) works shifts and is often at home during the day; he has seen no cleaners. If anything was done while the Applicants were out (and therefore without them observing the work), it was done so badly as to be of no value.

Electricity charges

3.8 Communal electricity charges cover power for the entry phone system and two storage heaters; lighting of common parts and of the driveway and garage areas; and any power used in cleaning. The storage heater in the basement is kept on even in summer to counteract damp. The heater on the top floor is generally used only in cold weather. In about March or April 2005, Mr Whitecross received a letter from Powergen addressed to"The Landlord" relating to an unpaid invoice for about £1,800.00 for electricity. He forwarded this to the landlord and it was (presumably) paid. The charges shown in the service charge account fluctuated for no apparent reason. The Applicants query what charges the landlord was actually required to meet.

Audit fees

3.9 The service charge accounts showed audit fees of £411.25 (£350.00 + VAT) for 2002-3, rising to £495.00 gross for 2004-6. The final account for 2006-7 is not yet available. There is no evidence of any audit ever taking place; indeed, it would be unusual were an audit of service charges undertaken. The usual practice is to obtain an accountant's certificate, as required by the lease. However, there is no real evidence that any certification has taken place since 2002-3. For that year, there appears to be a certificate from E A Associates, Chartered Accountants. Subsequent service charge statements contain a form of certificate but no evidence of any form of signature. In the circumstances, the Applicants doubt whether any accountants were in fact engaged to undertake this task and argue that this item should be disallowed altogether.

Reserve funds

3.10 There is reference in various service charge statements to reserve funds. For 2005 a figure of £2,375.97 appears under this head. It appears that this was to make provision for the anticipated decoration of the common parts and the garage doors. In the end, there was some dissension amongst the tenants and the garage doors were not painted. The ceilings in the common parts were painted quite recently. The Applicants point out that there is no provision in the lease for the landlord to establish or maintain reserve funds. Any surplus should be returned to the tenants or, at least, credited towards the next interim statement. The landlord has not done either.

3.11 Of course, contributions towards a reserve fund are not expenditure. The inclusion of allocations towards reserve funds under that heading is not good accounting practice. There should, of course, be an income and expenditure account for each accounting year and a balance sheet showing funds in hand, sums outstanding and any other capital balances.

Management fees

3.12 There is no obvious pattern to the sums claimed for management fees, save that they tended to be higher when more expenditure was shown in the service charge statements. The Applicants argue that the standard of management was extremely poor. Their impression was that the management team rarely if ever visited the property or took steps to ascertain what works or services were required. The only substantial maintenance contract was dealt with in total disregard of the consultation requirements and was not supervised adequately or at all. The Applicants had been put to a lot of trouble trying to get things done, without much success. It had proved extremely difficult to obtain information about the basis of the charges, as the landlord's agent did not respond adequately to correspondence.

General matters and costs

3.13 Generally, the Applicants argue that the service charges are largely unsubstantiated and that the service charge accounts should be rewritten to show the sums properly payable; that an order should be made preventing the landlord from adding to future service charge accounts any costs incurred by reason of the Application; and that the landlord should be ordered to reimburse the Applicants for the application and hearing fees.

The Respondent's Case

3.14 Mr Savvides asked a number of questions and made various comments. He approached the issues in an intelligent and realistic manner and is to be commended for his performance under difficult circumstances. He made several good points. He accepted that the tenants appeared to have been poorly treated. However, he was receiving invoices from Mr Andrews and (at least until some time in 2006, when Mr Andrews stopped paying rent) was paying them. He suspected that the Applicants were exaggerating. The Tribunal has taken into account all that he said. However, he could give no direct evidence of his own and was unable to persuade the Tribunal to doubt any of the Applicants' evidence. For this reason, there is no need to summarise his remarks.

4. THE LAW

Service Charges

4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also 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 so, the amount which would be payable.

4.3 Under **section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002** variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. Such charges, if variable, are generally payable only to the extent that they are reasonable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

Consultation

4.1 Under **section 20 of the 1985 Act** (as it was prior to 31 October 2003), where a landlord undertakes substantial works, the amount recoverable through a service charge may be limited unless consultation requirements are met. In appropriate cases, where the landlord has acted reasonably, strict compliance with the section may be dispensed with. Where there is no recognised tenants' association, the relevant requirements are as follows:-

(a) At least two estimates for the works shall be obtained.
(b) A notice accompanied by a copy of the estimates shall be given to each of the tenants concerned or 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, with an address and a deadline for responses.
(d) The tenants must be given at least one month to respond.
(e) The landlord shall have regard to any observations received and unless the works are urgently required they shall not be begun earlier than the deadline for responses.

4.2 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard. Since 31 October 2003 more stringent consultation requirements apply under the provisions of **section 20 of the 1985 Act** (as substituted by **section 151 of the Commonhold & Leasehold Reform Act 2002** with effect from 31 October 2003) and the **Service Charges (Consultation Requirements) (England) Regulations 2003**

4.3 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only the greater of £1,000 or £100.00 p.a. per tenant (as the case may be). However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.4 Accordingly, **under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002)** the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Costs generally

4.5 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge. The effect of this is that the landlord may be entitled to recover through the service charge provisions a contribution to such costs not only from the defaulting tenant but from all tenants.

4.6 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

4.7 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees.

5. CONCLUSIONS

5.1 In the light of the above findings, the Tribunal reaches the following conclusions, the effect of which are set out in the Schedule to the Order set out on Page 1 of these Reasons.

Garden maintenance

5.2 On the Applicants' evidence there was a reasonable level of activity until November 2004. Little work would be apparent in winter. This is consistent with the operation during 2002-4 of a regular maintenance contract set up while the landlord company was under family management. It appears there was very little activity thereafter until August 2006. The work done in August 2006 does not appear to have been done to a reasonable standard, which is not surprising, bearing in mind that it was done by builders. There has clearly been some activity since, basically grass cutting, though not very recently.

5.3 Significantly, the figures for 2002-3 appear to have been certified by an accountant, who must have seen the relevant invoices. The Tribunal allows the sums claimed for 2002-3 (£669.60) and for 2003-4 (£925.00). That would indicate a very basic standard of maintenance, amounting perhaps 2 hours per fortnight in the summer months and 1 hour per fortnight in the winter months, a total of 39 hours per annum. The minimum for a small local contractor at current rates would be around £20.00 per hour, giving a figure of £780.00 per annum. Larger contractors would be more expensive and might charge VAT. Rates for this type of work have not changed much over the past few years. The Tribunal concludes that a contractor has been employed to provide a minimal service which, since March 2005, has not been done well.

5.4 Doing the best we can, and having regard to the standard of work, the Tribunal allows £520.00 per annum for 2003-7. This is on the basis of the employment of a small local contractor at a contractual rate of £780.00 per annum and a substantial discount for poor performance since March 2005. The work in August 2006 appears to have been so botched as to be worthless. The Tribunal allows nothing for this work on the basis that a competent and diligent manager would have refused to pay for it.

Maintenance and repairs

5.5 The high level works carried out in 2002-3 appear to have represented very reasonable value for the money, bearing in mind the height and shape of the building and the associated scaffolding problems. It appears that the work was necessary and was carried out to a reasonable standard. Mr Armstrong argues that it took too long, which must have added to the cost of scaffolding. It is difficult to tell whether six weeks was an excessive time for the work, though it does seem rather an extended period. However, the contractor was supplying the scaffolding and, on the evidence, it appears that there was no extra charge for hire. In any event, by far the greatest cost of scaffolding is for erection and dismantling; hire is relatively cheap. In the circumstances, the failure to consult or supervise and the delay (if any) in completing the work do not appear to have caused loss to the tenants. The Tribunal would, if necessary, give dispensation under section 20ZA. Accordingly, the Tribunal allows the figure of £7,602.53 as claimed.

5.6 On the evidence, it appears that the work to the entry phone system and replacement of the exterior light fitting probably took place in 2005-6. Separate contractors would have been involved. The Tribunal accepts that the work on the entry phone system was not complex and did not take very long. The Tribunal allows £200.00 + VAT for this work. The replacement exterior light fitting was cheap and its location relatively easy to get at. The Tribunal allows £100.00 + VAT for that work. This makes a total of £352.50. In the experience of the Tribunal, this represents approximately the minimum prices for these jobs, if carried out by competent local contractors.

5.7 The cost of decorating the common parts is not known; however, it appears to represent rather less than half of the work for which Globe Building Contractors Ltd quoted £2,680.00 on 30 September 2006. The Tribunal allows £1,000.00 + VAT for this work, which was done to a good standard. There is no evidence of any other work. The Tribunal concludes that no other work was in fact carried out; accordingly, all other sums claimed under this head are disallowed.

Cleaning

5.8 On the evidence, it appears that there was probably some cleaning of common parts carried out while the landlord company was under family management. Again, the figures for 2002-3 appear to have been certified by an accountant, who must have seen the relevant invoices. A commercial landlord would be reasonably entitled to employ a sizeable organisation (not necessarily from Brentwood) to carry out work at a range of properties, rather than looking for small local contractors for each site, which would render quality control an almost impossible task. The contractor would have to bring his own cleaning equipment. It is a small contract; but there is a minimum rate any contractor would charge for each visit. £856.55 per annum amounts to £14.00 + VAT per week – which would hardly be worth the effort – or (more likely) £28.00 + VAT per fortnight. The Tribunal considers this to be a reasonable charge for a basic job, carried out fortnightly. In between times, the hallways and stairwells would get rather grubby, particularly in wet weather. This is broadly consistent with the Applicants' evidence. After 2002-3 there is no satisfactory evidence that any cleaning was done. The Tribunal accordingly disallows all subsequent charges.

Electricity

5.9 Once again, the Tribunal finds that the charge of £341.56 for 2002-3, which appears to have been certified by an accountant, genuinely represented the costs incurred by the landlord for that period. In the experience of the Tribunal, that would be a reasonable figure, perhaps even a modest figure for the electricity likely to have been consumed. The Tribunal is deeply suspicious of the figures subsequently claimed. The evidence of Mr Whitecross is puzzling; but the Tribunal does not consider it a sound basis on which to assess electricity costs. Electricity charges have increased considerably over the past year or two. Doing the best we can on the evidence, the Tribunal allows the figures shown in the Schedule.

"Audit" fees

5.10 A figure of £350.00 + VAT appears reasonable for certification of the service charge account in 2002-3 and is allowed as claimed. The figures claimed for subsequent years do not amount to any round figure net of VAT but do amount to round figures gross. The Tribunal considers this suspicious; as accountants are usually VAT registered and tend to charge in round figures net of VAT. The Tribunal is not satisfied that any certification took place in subsequent years and all other fees claimed are disallowed. The position as regards the 2006-7 final account (unpublished) is unclear.

Reserve fund

5.11 There is no provision in the lease for a reserve fund and the landlord is not entitled to accumulate a reserve. The landlord is entitled in any accounting year to collect on an interim basis costs likely to be incurred that year; but must refund sums not spent or, at least, give credit against the next interim payment(s). If it is thought desirable to accumulate funds for a major item of expenditure over a period longer than a year, this must be done by agreement, as was attempted (on the evidence of Mr Whitecross) in the early years of the leases. Reserve funds are not an expense and should not appear in the certificate of expenditure. No accountant would show a payment to reserve as a certified expense, which is one reason for doubting whether the certificates on the service charge statements for 2003-7 originate from an accountant. Payments towards anticipated expenditure during the accounting year are not reserves. The Tribunal intends to write the reserves out of the account altogether, save that credit must be given for any sums actually paid and not accounted for as having been spent.

Management fees

5.12 There is no obvious pattern to the sums claimed for management fees. The RICS recommends a flat rate payment per unit for routine management and a reasonable percentage fee for dealing with contracts for major works. If a surveyor or contract supervisor were employed, the manager's administration fee prior to November 2003 would typically be around 2-2.5% of the cost of the works; if the managing agent supervised the work himself, the fee might typically be 10-12%. The fees tend to be higher now because the work involved in consultation is significantly greater under the 2003 Regulations.

5.13 Management fees vary according to the size and complexity of the property and the tasks involved. Recent legislation has significantly increased the burden on managers. In this case, the managing agent would be quoting for management of a substantial portfolio and the landlord would be in a position to strike a good bargain. In the experience of the Tribunal, typical management fees for managing this block as part of this landlord's portfolio at today's prices would be in the region of £125.00 + VAT per flat, a total of £1,615.62 per annum. This would cover the arrangement of insurance, gardening, cleaning common parts and routine maintenance; inspections; correspondence with tenants; paying bills; preparing service charge accounts; and routine collection of service charges. In the event it was necessary to pursue an individual tenant for payment, the initial correspondence would be included but any legal costs reasonably incurred should generally be recoverable from the tenant.

5.14 The Tribunal has done its best to assess routine management fees for 2003-6 and arrives at figures of £60.00 + VAT per flat for 2003-4; £70.00 + VAT per flat for 2004-5; and £100.00 + VAT per flat for 2005-6. This is on the assumption that the management was competently carried out. In view of the deficiencies (and worse) in management referred to above, the Tribunal reduces these figures by 50% for each of the above years to arrive at the costs reasonably incurred as shown in the Schedule. For 2005-6, the figure arrived at is £646.25. However, the landlord paid only £553.00 that year and cannot recover more.

5.15 As regards 2002-3, it is necessary to make an additional allowance for administration of the high level works. The work actually done appears to have been minimal. On the assumption that the work cost £7,602.53, the Tribunal assesses a reasonable administration fee at £180.00 inc. VAT. The sum claimed for that year was £974.07, leaving £794.07 for routine matters. This amounts to just over £60.00 + VAT per flat. Management for that year was, on the evidence, a great deal better than in subsequent years. In the judgment of the Tribunal the total sum claimed was reasonable and is accordingly allowed in full.

Costs

5.16 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. An obvious injustice would occur if a successful tenant applicant (and indeed his fellow tenants) were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. A wide variety of other circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.17 In this case, the Applicants have been very substantially successful. Overall, on the information available to date, the Tribunal concludes on a provisional basis that it would be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property.

5.18 This conclusion is subject to any "Calderbank" offers (offers made without prejudice save as to costs) or other relevant correspondence relating to attempts to settle the dispute, which the parties may submit to the Tribunal within 14 days from publication of this Decision. The parties have permission within the same period to submit written arguments in relation to costs.

5.19 The Tribunal does not have sufficient information to determine what has actually been paid by each Applicant and what is the balance of account in each case. It should be possible, working from the revised service charge account set out in the Schedule hereto, to work out the balances. In the event it proves impossible to reach agreement on that matter within 8 weeks after the issue of this Decision, the parties have permission to apply to the Tribunal for a determination. The parties should refer to the Order for the procedural details.

5.20 The Applicants are entitled to expect that the 2006-7 service charge account will be certified by an accountant. If that appears to be the case, they should expect to see a certification fee in the region of £400.00 + VAT included in the account. The Tribunal is prepared to say that such a charge would be reasonable. However, in the circumstances, the landlord ought reasonably to supply copy invoices from the accountant to each tenant.

Geraint M Jones MA LLM (Cantab)
Chairman
19 June 2007

SCHEDULE

BAKERS COURT, BRENTWOOD LVT
CAM/22UD/LSC/2003/0003

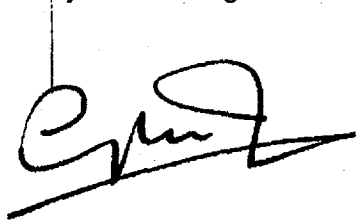
Part 1
Service Charges Claimed

	2002-3	2003-4	2004-5	2005-6	2006-7
Buildings Insurance	1,587.16	1,760.97	1,872.27	1,872.27	2,034.83
Gardening	669.60	925.00	813.00	725.00	
Maintenance and Repairs	7,602.53	725.00	1,100.00	1,352.50	1,175.00
Cleaning	856.55	800.00	850.00	875.00	
Electricity	341.56	529.00	326.00	653.00	
Audit Fees	411.25	420.00	495.00	495.00	
Reserve Fund	0.00	0.00	2,375.97	527.23	
Management Fee	974.07	563.03	665.63	553.00	
Total Expenditure	12,442.72	5,723.00	8497.87	7,053.00	3,209.83

Part 2
Service Charges Allowed

	2002-3	2003-4	2004-5	2005-6	2006-7
Buildings Insurance	1,587.16	1,760.97	1,872.27	1,872.27	2,034.83
Gardening	669.60	925.00	520.00	520.00	520.00
Maintenance and Repairs	7,602.53	0.00	0.00	352.50	1,175.00
Cleaning	856.55	0.00	0.00	0.00	0.00
Electricity	341.56	360.00	380.00	410.00	440.00
Audit Fees*	411.25	0.00	0.00	0.00	*0.00
Reserve Fund	0.00	0.00	0.00	0.00	0.00
Management Fee	974.07	387.75	452.37	553.00	807.81
Total Expenditure	12,442.72	3,433.72	3,224.64	3,707.77	4,977.64

*May be subject to change if the service charge account for 2006-7 is duly certified.



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19 June 2007