

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

CHI/00HB/LIS/2007/0006

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985**

REASONS

Applicant: Bristol City Council

Respondent: Mr C Evans

Re: 33 Brookridge House, Standfast Road, Henbury,
Bristol, BS10 7HN

Date of Application: 16th January 2007

Date of Hearing: 9th May 2007

Date of Inspection: 9th May 2007

Venue: The Appeals Service, Vintry House, Wine
Street, Bristol

Appearances for Applicant: Mr John Tooze – Home Ownership Team
Manager, Mr Chris Williams – Paint Project Co-
ordinator, Mr Weston and Mr Frank Brady –
Supervisor of Estate Management Team/Former
Line Manager

Appearances for Respondent: The Respondent attended un-represented

Also in Attendance: Nik Bennett- Tribunal Clerk, John Tarling -
Vice President Southern Panel

Members of Leasehold Valuation Tribunal: Miss S Casey (LLB HONS)
Lawyer Chairman
Mr J McAllister (FRICS)
Chartered Surveyor
Mr S Fitton Lay Member

Date of Tribunal's Decision:

INTRODUCTION

1. This application by the Applicant is under Section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), namely, a request for a determination of reasonableness of the amount of service charges payable for the period 2006/2007.
2. The service charge costs under consideration are in respect of communal internal decorations undertaken at Brookridge House by the Applicant's chosen contractors during the summer of 2006. The total cost for these works was £55,523.46. The Respondent has been notified he will be liable to pay £716.58 plus a 15% administration charge.
3. The Respondent considers these costs to be unreasonable.
4. The Applicant is the Landlord; there is no application for costs under s20C of the 1985 Act.

The Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002

S.18. Meaning of "service charge" and "relevant costs"

- (1) In the following provisions of this Act "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 and 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.....

S.19. Limitation of services 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.....

DOCUMENTS

5. The documents before the Tribunal are:
- a. Applicant/Council's bundle, references JT1 – JT132
 - b. Respondent/Mr Evan's bundle all references CE1 – CE5(ii)
 - c. Applicant's statement signed by J Tooze 19/03/2007
 - d. Respondent's statement dated 31/03/07

THE PROPERTY

6. The property is known as, Brookridge House, Standfast Road, Henbury, Bristol, BS10 7HN ('the Property'). A multi-storey block comprising fourteen floors, each with lift lobbies, two landings on each floor, six flats on each floor and communal rooms on the ground floor comprising a caretaker's office, kitchen, laundry area, communal lounge and caretaker's flat. There are lifts to each of the floors and an internal stairwell. There are a total of 84 flats, 3 of which are occupied by The Respondent and two other Leaseholders, the remainder occupied by Council Tenants.

INSPECTION

7. The Tribunal inspected the Property on the morning of the hearing on 9th May 2007. Present were; for the Applicant, Mr John Tooze, and Mr Frank Brady; for the Respondent and Councillor, Mr Mark Weston who was supporting the Respondent. Briefly, the Property is a modern detached block of flats, constructed of brick elevations, with a flat roof, upvc double glazed windows,

outside garages, parking and communal landscaping. All main services are connected, and a gas fired central heating system with a central boiler, serves the flats. The Respondent's Flat is on the sixth floor. Both Parties pointed out to the Tribunal the communal areas recently redecorated under the contract referred to above, being only internal works to the communal areas of the Property.

BACKGROUND INFORMATION

8. The secure tenant ('the Original Lessee') of the flat known as 33 Standfast Road, Henbury ('the Flat') exercised the Right To Buy under Part V of the Housing Act 1985 and entered into a 125-year lease on 12th September 1988 ('the Lease'). A copy of the Lease appears in the Applicant's bundle (pages JT1-27)
9. On 12th August 2004 the Original Lessee sold the Flat to the Respondent, Mr Christopher Evans under an assignment of the Lease.
10. Under clause 5(2)(A) of the Lease, (JT6), the Lessee covenants to pay a service charge, "being a proportion of the reasonable expenses and outgoings incurred, or anticipated by the Council in respect of the repair, maintenance and renewal of the structure and exterior of the building and in respect of the other matters specified in the Third Schedule." (JT21)
11. The Third Schedule, of the Lease, (JT21) provides detail of the Applicant's expenses, outgoings and other heads of expenditure in respect of which the Lessee is required to pay a proportionate part by way of service charge (JT22, paragraph 5 - the Lessee is liable for a proportionate part of interior decoration).

The Third Schedule, paragraph 5 of the Lease, reads as follows:-

“ The cost of maintaining suitable floor coverings (replacing the same from time to time as necessary) in and of maintaining repairing cleaning decorating and lighting the main entrance way and the passages landings and staircases and all other parts of the building not consisting of flats and of maintaining repairing renewing and (where necessary) of cleaning and decorating all of the apparatus and appurtenances of the building other than any forming part of any of the flats therein”

12. The Third Schedule, (JT8) paragraph (I) of the Lease defines the apportionment for each Lessee by reference to rateable values. The total price to be charged by Bristol Contract Services, as stated above, was £55,523.46, (JT33, JT34 and JT40). The City Council use rateable values to apportion block costs to the individual properties. In this case the block cost of £55,523.46 was divided by £12,475.00, (the aggregate rateable value of all the flats at Brookridge House) and then multiplied by 161, (the former rateable value of flat 33), to arrive at the figure of £716.58 this being the Respondent's share of the service charge costs.

THE ISSUES

13. On the 30th December 2005 a Notice of Intention (JT30-31) was served on all the leaseholders informing them that the Applicant intended to carry out repairs and redecoration of the communal areas at Brookridge House. JT 30 gives notice of the proposed works and invites Lessees to make representations. Specifically, the notice advises:-

“You may also write to John Tooze, if you would like to nominate a contractor to tender for the proposed work. If you wish to do this, you will need to forward the contractor's name and address to John Tooze by the deadline stated above.

Please note that the City Council will only be able to enter into a contract with the contractor of your choice if they meet the following criteria:

- a. They have public liability insurance of at least £5 million and employer's liability insurance of £10 million;
- b. They have a health and safety policy which has been approved by Bristol City Council;
- c. They can demonstrate that the company has traded for at least two years and produce accounts to show they are financially sound;
- d. They can demonstrate that their work force have the necessary skills (NICEIC for electrical, CORGI registered for gas installation and CITB Advanced for scaffolding work) and by means of three independent witnesses show that it is able to undertake the proposed work to a high standard; and
- e. They have the capacity to undertake the proposed work.

Before nominating a contractor, please ensure that they are willing to tender for the work the Council is proposing to undertake.”

The Respondent confirmed in writing on 13th January 2006 that he did not wish to make observations on the Applicant's intentions, or to nominate a contractor (JT32).

14. Three contractors from the Applicant's list of approved contractors were considered for this work. All of the contractors tendered on the basis of a 0% adjustment against the Schedule of Unit Rates (see JT34). These were Bristol Contract Services (the Applicant's direct labour organization), Gary Rebours Ltd and A Sellers Decorating Contractors.
15. A Notice of Proposal (JT34-35) was issued on 10th February 2006 (re-dated 8th February 2006), informing the leaseholders of the Applicant's proposal to award the contract to Bristol Contract Services. The Respondent was advised that his contribution to the costs would be £716.58 (plus 15% administration charge) under the service charge clause.

16. The proposed works were divided between six jobs as follows;

Job Number 126994-Paint caretakers Office-£289.46

Job Number 1270377-Paint Community Room and Kitchen-£1,421.64

Job Number 1270504-Painting to Ground Floor Lobby-£953.13

Job Number 1303522-Painting to Stairwells-£13,733.43

Job Number 1270775-Painting Lift Lobbies /Flat Lobbies-£38,262.17

Job Number 1077016-Prior to Painting Repairs-£863.63

(JT41-JT48)

Total cost £55,523.46. The tender process was explained in writing to the Lessees (JT35).

17. The Respondent wrote to the Applicant on 16th February 2006(JT36) expressing concern at the cost of the work. A copy of the Technical Specification and breakdown of the job costs were obtained from the Council's Project Manager and sent to the Respondent (JT37-73). The contract was awarded to Bristol Contract Services on 14th March 2006 and a notice of Agreement was sent to all leaseholders on 4th April 2006. The work was carried out during the summer of 2006.

18. Extensive correspondence has been exchanged between the parties concerning the cost of the redecoration of the communal areas at the Property without resolution. In order to resolve the dispute the Applicant made an application to the Tribunal to consider the reasonableness of the service charges.

THE LAW

19. The Commonhold and Leasehold Reform Act 2002 inserts a new section 27A into the 1985 Act. This gives the Leasehold Valuation Tribunal extensive powers to decide, by whom a service charge is payable, to whom it is payable, how much is payable, when it is payable and in what manner it is payable. There must be authority within the Lease for the landlord to recover services charges.

20. For the Leasehold Valuation Tribunal ('the LVT') to have jurisdiction to decide the matter the application must be received on or after 30 September 2003.

21. For the purposes of the LVT's jurisdiction service charges are defined in section 18 of the 1985 Act. A service charge will have the following characteristics:

S18. Meaning of "service charge" and "relevant costs"

Subsection (1) In the following provisions of this Act "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.....

S19. Limitation of services 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.....

22. Section 20B of the 1985 Act - imposes a statutory time limit on recovery of payment of service charge. A tenant is not liable to pay any of the relevant costs taken into account in determining the amount of a service charge, which were incurred more than 18 months before a demand for payment of the service charge is served on the tenant. As regards this case, neither Party has

raised any issue relating to statutory time limits on recovery of payment of service charge.

23. Sections 20 and 20ZA of the 1985 Act - set out detailed consultation procedures which a landlord must follow in order to be entitled to recover the costs of service charges exceeding specified amounts.

THE HEARING

24. The hearing was held on Wednesday 9th May 2007 at The Appeals Service, Vintry House, Wine Street, Bristol.
25. The Applicant attended represented by Mr John Tooze, Mr Chris Williams and Mr Frank Brady. The Respondent attended, un-represented.

THE EVIDENCE

26. It was agreed between the Parties that there were no significant issues regarding statutory consultation requirements. One issue did arise, the Applicant had repeatedly stated in correspondence that the Respondent had failed to raise any observations throughout the entire consultation process. At the hearing the Applicant agreed that this was not accurate. It was accepted that the Respondent had made written representations concerning the costs of the works in that he claimed the costs were excessive (JT74).
27. The Applicant was asked to explain the procedures for placing tenders. Specifically, how a job is priced and placed with a particular contractor. (JT35 sets out the tender process).
28. Mr Williams, Paint Project Co-ordinator for the Applicant, explained that on a three-year basis the Applicant, through its procurement team compiles a list of works and calculates a pre-set price for the works. The prices are referred to collectively as the "Schedule of Unit Rates", (He referred the Tribunal to documents JT33-35). Unfortunately the Applicant did not produce a copy of

this Schedule in its documents bundle. The procurement team calculate the Schedule of Unit Rates by taking into account the cost of materials, cost of labour and a reasonable profit margin for the contractors. Use is made of, amongst other things, recognised industry pricing books and the procurement team's knowledge and experience of the industry.

29. The Applicant stated that councils use the Schedule of Unit Rates nationally and Bristol City Council has used this system for approximately fifteen years. Mr Williams advised the Property was last decorated in 1996.
30. The Tribunal enquired whether the Applicant ever checked their pricing system using any other means or did they rely entirely on the Schedule of Unit Rates system. The Applicant explained that the prices in the Schedule of Unit Rates are reviewed for the impact of inflation every three years. Some jobs are allocated individually by competitive tender. To Mr. Williams' knowledge this pricing system was not tested by say, obtaining competitive quotations from other suitable decorating contractors direct.
31. The Applicant identifies periodically any works, which need to be carried out (on Council owned property). The Applicant's surveyor will assess what needs to be done. The Applicant will approach their approved contractors, providing them with a specification of works to be carried out and the relevant Schedule of Unit Rates. As regards works to the Property a Technical Specification dated 8th November 2005 had been obtained from Ian Lealand a Specifier Consultant for Akzo Nobel Decorative Coatings Ltd. (JT55 to JT73) The Specification defines the types of materials required etc. This was the only specification the Council was able to use that met the Class O regulations on fire regulations. Contractors were then asked to tender for the works by reference to the Schedule of Unit Rates and the Technical Specification. Contractors would set a price they would demand for carrying out the Works by indicating a plus or minus % against the Schedule of Unit Rates provided.
32. In this instance the Applicant approached three of their Approved Contractors, Bristol Contracting Services, Rebours Limited and A.Sellars. All three

companies tendered on the basis of 0% against the Schedule of Unit Rates. This means all of the contractors agreed the Schedule Unit Rate price and none of the Approved Contractors proposed to charge more or less than the Schedule of Unit Rates. See JT33, JT34 and JT40. The total cost figure quoted by all three contractors was £55,523.46. In document JT34, Notice of Proposal, no contractor was identified as Contractor 3 in the final column (JT34 – 35). The Respondent raised the issue of the omission from the Notice of Proposal, of the third contractor. The Applicant advised that A. Sellars had tendered at the same price as Bristol Contract Services and Rebours. The Applicant accepted the omission of A.Sellars from the Notice was an oversight.

33. The Applicant's representatives went on to state that if several leaseholders had made representations that the price was too high they could have considered whether or not there was any substance to those representations. In addition, the consultation procedures under Section 20 of the 1985 Act presented an opportunity for the leaseholders to respond. There were three potential leaseholders in the Property who could have made representations. The other 81 Flats are Council owned so the Applicants themselves would be paying their apportioned share of the works. The Applicant submitted that their own liability to meet such a large proportion of the total cost meant it was in their best interests to achieve the lowest price.
34. The Applicant confirmed that they have not yet formally charged the subject service charge costs. The Tribunal was advised that they will appear in a certificate of service charges for 2006 – 2007 which will be issued in July or August of 2007.
35. The Applicant was asked to justify the price of £38,262.17p for Job no: 1270775. This comprised of painting the lift lobbies, the flat lobbies and the communal areas. The Applicant explained that there were 14 floors so there was a considerable amount of work involved and referred to the particular requirements for specific materials in the technical specification. Answering the question from the Tribunal, the Applicant stated, that the contractor used

was the Applicant's direct labour organization and that V.A.T., was not chargeable as the contract was exempt. Mr. Williams also stated that the Applicants could not provide a breakdown of the total cost (£55,523.46) between materials and labour. He also considered that if the works had been tendered to outside contractors that the quoted figure would be within 10% of the above sum.

36. No representations were made by the Applicant as to the authority in the Lease to recover the 15% administration cost. The Applicant was asked to clarify the amount, which would be charged as, "administration costs". The Applicant explained that a flat rate management fee is charged each year as a service charge cost. In addition, the Applicant sought to recover, "administration costs", being 15% of the value of the service costs not including management fees or insurance fees. No reference was made to any clause in the Lease authorising these costs. In any event these charges are not service charges as such so the Tribunal did not consider them.

RESPONDENT'S CASE

37. The Respondent argued that the costs incurred and charged under the service charges in the Lease were unreasonable in terms of both cost and quality of workmanship.
38. With regard to the level of costs charged, the Respondent submitted a comparable for the Tribunal's consideration. The Respondent compared the cost of re-decorating his own flat to the service charges requested by the Applicant. In a letter to Bristol City Council, dated 16th February 2006, (JT36) the Respondent explained that he was charged £700 inclusive of materials and labour to have the entire flat re-decorated using the services of a third party contractor. This included painting walls, ceilings, and glossing woodwork. The Respondent stated the area of the flat was a greater area than that of all the flat lobbies and lift lobbies on any of the respective floors decorated by the

Applicant. The Respondent concluded that the Applicant's costs were likely to be some seven times greater than the cost of his own re-decoration work. (JT105. Respondent's email dated 8th September 2006 to Bristol City Council).

39. The Respondent gave evidence that he was aware that three Leaseholders in the block shared these views, as did a local Councillor.
40. The Respondent accepted that in the communal areas and stairwells, fire retardant paint was required. The Respondent questioned the Applicant's ability to obtain paint and services more cheaply through bulk purchasing.
41. The Respondent represented that the length of time that labour was involved was unreasonable.
42. The Respondent submitted that a reasonable charge for his apportioned share of these works should have been £200.00. This was calculated by the fact there are six flats on each floor. If each flat paid £200.00 this would amount to a total cost of £1200.00 per floor. That would be more than the cost of £700.00 for redecorating his flat. His flat, he reminded the Tribunal, was of a larger area than the individual communal area on any one floor.
43. The Respondent also made representations at the hearing in relation to the quality of the workmanship. He complained of paint being splashed upon the doors and walls by the workmen. The quality of the floor paint in the lift lobbies and the flat lobbies were drawn to the Tribunal's attention during the inspection, and during the hearing. The Respondent compared the quality of the floor paint on the stairwells, which he described as good, with the quality of the floor paint in the lift and flat lobbies, which he described as poor. The Respondent had raised these issues in earlier correspondence with the Applicant (see JT75, JT77, JT82 and JT84).
44. The Applicant explained that a former colleague, David Scully, was the contract manager for this project. The Tribunal was advised that David Scully

had since left Bristol City Council. These issues relating to the quality of the floor paint were raised with Mr Scully and it was accepted by Mr. Scully that some works were not of a reasonable standard. As a result, the contractors recoated the whole of the staircase area at the Applicant's request. Further, it was accepted that there were drops of paint on the newly painted floors arising when the walls were re-coated. The contractors corrected these works at no extra cost. The Tribunal had read JT98, letter from Frank Brady, Housing Supervisor to the Respondent, which accepted remedial works had to be carried out, (paragraph C and also JT132).

45. The Respondent did agree at the hearing, that the standard of work on the walls, ceilings and paintwork were reasonable and he had no outstanding major complaint in respect of these. The Respondent was still dissatisfied with the quality of work on the floors in the lobby and the lift area.
46. The Respondent queried whether or not Bristol Contract Services were, ' An arms length' organisation. It was explained by the Applicant that Bristol City Contractors are a stand-alone organisation that are paid by local government but subject to the same Schedule of Unit Rates as any other contractors. The Applicant stated that Bristol Contract Services are regular contractors for council contracts but they are not always chosen.

DECISION

47. The Tribunal found that the service charge is recoverable under clause 5(2)(A), (JT6) and the Third Schedule of the Lease (see JT21).
48. Tribunal had to look at the standard of the work and the overall cost of the work and consider whether or not the cost was reasonable.
49. It is not an issue that it was reasonable to carry out the work. On inspection the work appeared to be of a reasonable standard. All of the statutory consultations and requirements in Section 20 and Section 20ZA have been met.

50. There is no issue as to how the total cost of £55,523.46 is apportioned amongst the various tenants – leaseholders. The Tribunal noted that it is the total cost of £55,523.46, which is being queried. It was accepted by the Tribunal that only a properly qualified and competent contractor, with sufficient skills and experience could carry out such a job.
51. The Tribunal noted that no evidence was produced by the Applicant regarding the exact prices in the Schedule of Unit Prices. Evidence was given of a broad procedure for establishing which contractors should carry out works. The Tribunal noted it would have been helpful to see specific detail of labour costs and it would have been useful for the Tribunal if the Applicant had provided more detailed figures as to how they arrived at the total cost of certain jobs, particularly job number 2170775. The Tribunal considered it could have expected identification of the individual cost of materials and labour costs. The Tribunal did accept there was clear evidence of a procedure used by the Applicant to price works competitively. The technical specification and Schedule of Unit Prices had been sent to three separate contractors. The three contractors had each responded and offered to carry out the works at the same price.
52. When the Notice of the Proposed Works was issued it was possible for any tenant to have nominated their own contractor. No tenant took up this opportunity including the Respondent. (JT30-31).
53. The Tribunal considered on the evidence presented, the costs of the works appeared, at first glance expensive. The work had been carried out to a reasonable standard. No lower price had been put forward by any other contractor.
54. The Respondent's, 'comparable costs', relating to the works carried out at his Flat did not assist the Tribunal. Little weight could be attributed to the cost of re-decorating the Respondent's own flat. These works involved different materials/different levels of labour and did not take into account in any way

the nature of the organisation that would be required to carry out the internal communal re-decorations at the Property. The comparable did not meet the criteria set out in (JT30-31).

55. After careful consideration of all of the material evidence the Tribunal concluded that the costs of £716.58 are reasonable. The redecorating contract was, somewhat unique, being of a 14-storey block of flats. Special materials had to be used to communal areas, lift wells etc, to comply with fire etc, regulations. There was also the difficulty of doing the works whilst the areas were in almost constant use, which would take more time. A specialist supplier of materials prepared the specification. Finally, as stated above, it was unfortunate that more detailed evidence as to the pricing of the contract by the Applicant was not produced; however there was no direct evidence that the overall cost of the contract was unreasonable.

Signed: Siobhan Casey
Siobhan Casey
Lawyer Chairman
Dated: 31 May 2007