SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/19UJ/LSC/2006/0055

BETWEEN:

MRS SHEILA BROOKS AND MR AND MRS JOBSON

APPLICANTS/LESSEES

AND

ONE DAY COUNTRY COTTAGES LIMITED

RESPONDENTS/LANDLORD

PREMISES: 34A & 34B GREENHILL, WEYMOUTH, DORSET ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR D M NESBIT JP FRICS FCIArb
Mr A MELLERY-PRATT FRICS

DETERMINATION AND REASONS

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1. The Application

1.1 On 29th June 2006 the Applicants applied to the Tribunal for a determination as to the reasonableness of service charges demanded by the Landlord in respect of 34A & 34B Greenhill, Weymouth, Dorset (the Premises) under Section 27A of the Landlord and Tenant Act 1985.

1.2 The service charges in dispute were:-

Roofing works	David Clark Roofing	£2,000.00
	GRP Flat Roof Systems	£499.38
External Painting	Dove Decorating Ltd	£3,395.75
Rebuilding flank wall, pointing, repair to window heads, scaffolding		£14,724.00
Buildings insurance premium		£580.11

1.3 The Applicants also sought an order under Section 20C of the 1985 Act that the Landlord should not be permitted to add the cost of the Tribunal proceedings to a future service charge demand.

2. The Inspection

2.1 This took place immediately prior to the hearing on 14th November 2006.

2.2 The premises at 34 Greenhill comprise a large detached property. It is currently divided into three flats. That on the ground floor (No 34) is occupied by Mr and Mrs Albin who are Directors of the Freehold owners, One Day Country Cottages Limited. Mrs Brooks is the Lessee of number 34A on the first floor and Mr and Mrs Jobson are the Lessees of number 34B on the second floor. The property is constructed of brick under a tiled roof. On each elevation there are red bricks to approximately the half way point up the walls with the upper section being constructed in a contrasting cream coloured brick. This seems to be a feature of the properties in Greenhill.

2.3 The most striking feature of the location of the premises is that they command an elevated and impressive panoramic view right across Weymouth bay. The property would, however, be very exposed to the weather coming in off the sea

2.4 The premises appeared to be well maintained for their age. The Lessees pointed out to the Tribunal the standard of repair to the lintels above the rear windows of 34A compared with the standard of finish to the ground floor lintels. The Lessees

also asked the Tribunal to note the standard of plumbing pipe work at the front of the building. The Tribunal also inspected the flank wall which featured prominently in the case papers which will be referred to in greater detail hereafter. The Lessees also wished to point out some plant growth in the chimney.

3. The Hearing

3.1 This took place at Weymouth Borough Council offices on 14th November 2006.

3.2 In attendance for the Applicants were:
Mrs S Brooks who was represented by her son Mr J Brooks and Mr and Mrs L Jobson; and for the Respondents Mr Albin, Director of the Landlord company, and his solicitor Mr J Mackenzie of Redferns, solicitors.

3.3 The Applicants had submitted a statement of case which had been responded to by the Respondents and the Applicants had commented on the Respondents' statement.

4. The Issues

4.1 The issues in the case were identified at the commencement of the hearing as follows:-

(i) whether the consultation procedure laid down in Section 20 of the 1985 Act and the consultation regulations of 2003 had been complied with in respect of the works for which a Section 20 Notice had been served, and if not, whether those requirements should be dispensed with.

(ii) whether the Tribunal should dispense with the requirements of a Section 20 Notice and the consequential consultation procedure for the works carried out to the flank wall of the premises or whether the Landlord

should be restricted to recovering a maximum of £250 per flat for this work.

(iii) whether the work to the flank wall was reasonably necessary.

(iv) whether the cost of each item of work carried out by the Landlord for which it seeks recovery from the Lessees by way of service charge was reasonable.

(v) whether the cost of insurance arranged by the Landlord was reasonable.

5. The Evidence

5.1 The Section 20 Notices and subsequent procedure.

5.1.1 The Applicants' evidence was that the Respondents acquired the freehold on 24th May 2005. Prior to that they said that "management had been by amicable consultation" between the Landlord and the Lessees "with both the former freeholders and the Lessees variously taking the lead". The lease provided for a four-yearly cycle of maintenance and the last major works had been carried out in 2001.

5.1.2 On 25th October 2005 Mr and Mrs Albin wrote to Mrs Brooks stating their intention to commence the "urgent repairs and refurbishment needed to the outside of the building" and they enclosed a copy of an estimate from Fordingtons Builders. It was anticipated that the work would start within the next four weeks. The estimate was for £9,708.00 plus VAT and was to cover the erection of scaffolding, raking out of pointing and re-pointing, painting and

timberwork and masonry, repair of cills and under heads with a stone repair mortar mix, replacement of existing upvc guttering and painting cast iron pipes.

5.1.3 The Lessees did not want this work to be carried out in the winter-time as they had previously encountered problems with the pointing work carried out by the contractors who did the work to the premises in the winter of 2001.

5.1.4 The Lessees were somewhat alarmed at the Landlords' letter, partly because it had come without the prior consultation they had been used to and also because of the time of year that the work was going to take place. They also wanted to be invoiced by the contractors in one-thirds and to see "some sort of guarantee" before agreeing to the contractor. They therefore proposed a meeting with Mr and Mrs Albin for 5th November 2005.

5.1.5 Mr and Mrs Albin did not respond to the invitation to the meeting which proceeded in their absence. A "proposed schedule of maintenance works at 34 Greenhill for March 2006" was drawn up at this meeting. The works specified in this schedule were much the same as those for which Fordingtons had estimated save that on this schedule there was added works to the roof to cure some damp penetration.

5.1.6 When Mr and Mrs Albin did not attend the meeting on 5th November 2005, the Lessees wrote to the contractors, Fordingtons, to notify them that One Day Country Cottages were in dispute with the Lessees and that they, the Lessees, had placed the matter in the hands of solicitors. This letter also suggested that

Fordingtons "check on the credit worthiness of One Day County Cottages Ltd before proceeding further". They also said that they were not prepared to pay their portion of the costs.

5.1.7 On 9th November 2005 Messrs Redferns, solicitors for the Landlord, wrote to the Lessees with a notice under Section 20 of the 1985 Act. This attached quotations from Cooke Construction Limited and Richard Dunne Construction Limited and referred to the quotation from Fordingtons mentioned above.

5.1.8 By a letter of 22nd November 2005 the Lessees responded by saying that they favoured Fordingtons but wanted them to give a quotation based on their own schedule of works and not the Landlord's.

5.1.9 A second Section 20 Notice was served by Redferns under cover of their letter of 24th February 2006. This notice covered re-pointing and work to the guttering and down pipes together with the window heads and the turning round of bricks in the areas where the bricks were spalled on the gable end and Main Road elevation. This notice was accompanied by a quotation from Maiden Building Services and L & P Property maintenance Services. Redferns said that they were not enclosing estimates from Cooke Construction and Richard Dunne as those had already been supplied with the first Section 20 notice.

5.1.10 On 6th March 2006 a further Section 20 notice was served by Redferns. This covered external painting and roof repairs. Quotations were enclosed from Dove Decorating Limited for the external painting and from David Clark Roofing for the

roof repairs. This notice is dated 6th March 2006 and required observations to be received by 6th April 2006.

5.1.11 Mr and Mrs Jobson responded to these notices by sending a copy of an estimate from J F Building Services in respect of the Lessees' own schedule of works drawn up on 5th November 2005. This was expressed to be an "estimate only" and did not include the cost of scaffolding. On 19th March 2006 Mrs Brooks wrote to Redferns saying she wanted Fordingtons to quote on the basis of the 5th November schedule.

5.1.12 Redferns wrote to the Lessees on 31st March 2006 saying that the works were to start on 5th April 2006, one day before the expiry of the period for observations set out in the third Section 20 notice. On 4th April 2006 Mr and Mrs Albin wrote to say that the work would begin on 10th April 2006.

5.1.13 On 25th April 2006 Redferns wrote to the Lessees' solicitors saying that in the course of the works their client had been advised that the flank wall "is in a serious condition and is likely to collapse in the foreseeable future if not replaced." They went on to say that a surveyor's report had been commissioned to establish whether or not the work was really necessary. They said that if it was found to be necessary then the work would have to be carried out urgently and that there would be insufficient time for the full consultation procedure to be complied with.

5.1.14 The Lessees responded by letter dated 3rd May 2006 in which they said that they did not accept that the wall needed replacing. New wall ties might have been necessary but not the re-building of the wall. The wall was built by 5th May 2006.

5.1.15 The Lessees were not content with the quality of all the work that had been carried out. In particular they said that the lintel above the first floor windows at the rear of the property had not been attended to, or if they had, that the work had not been to the same standard as on the ground floor. Some original Chickerell brick had been replaced with "modern stock brick" and a cast iron downpipe had been replaced with one made out of upvc. They also questioned whether works for the benefit of the ground floor flat such as cavity wall insulation had been included in the cost to be shared by the other flat owners.

5.1.16 As for the buildings insurance, details of cover had only recently been received. This included cover for items which were not relevant to their property such as for "communal contents" and "rental loss". For the current year the premium was £197.37 per flat. The Applicants objected to paying a one-third share of the total cost of the premium because the ground floor flat had a greater rateable area than the other two flats but when it was pointed out by the Tribunal that the lease provided for the insurance premium to be divided into equal thirds the Applicants did not pursue this point. The Applicants did not produce evidence of other comparable insurance quotations. The Respondent's evidence was that the insurance was arranged through a reputable broker who recommended a policy after researching the market. The Respondent was willing to obtain expert valuation advice as to whether the sum assured was appropriate for the future.

6 The Lease

6.1 By Clause 1(a) of the lease the Lessees are obliged to pay "from time to time on demand a sum or sums being one-third of the costs to the landlord of effecting and maintaining the insurance.... against loss or damage by the risks specified in Clause 4(b) hereof.

(b) On demand the sums which shall be payable by the Tenant under the covenants hereinafter contain in Clause 3 hereof".

6.2 By Clause 3(a) of the lease the Lessees covenant to pay one-third of the cost of repairing and decorating the Premises. By Clause 3(b) the cost of repairing and maintaining the structure of the Premises is stated to include "the cost of maintaining repairing renewing and rebuilding if necessary the main walls foundations roof drains and exterior" of the Premises.

6.3 By Clause 4 of the lease it is the Landlord's responsibility, subject to receiving contributions towards the cost from the tenants to keep the main walls foundations roof drain the outside staircase and exterior of the Premises in good repair decorative order and condition and in every fourth year to paint the exterior of the Premises.

7. The Law

7.1 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the amount which is payable

(d) the date at or by which it is payable

(e) the manner in which it is payable.

7.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

Further, by Section 20 (1) of the Act the relevant contribution of tenants to pay for qualifying works are "limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to works or agreement by (or on appeal from) a leasehold valuation tribunal.

Under the Service Charges ((Consultation etc) (England) Regulations 2003 the amount to which qualifying works are limited if the regulations are not complied with is £250.

7.3 The consultation requirements are set out in the Service Charges (Consultation etc) (England) Regulations 2003. They are extensive and it is not proposed to repeat them in these reasons. In summary, however, the requirements are as follows:-

Step 1 - Notice of intention to carry out works is given by the Landlord to the tenants. The notice must describe the works in general terms, state the Landlord's reasons as to why it is necessary to do the works, invite the tenants to make observations in writing and set out where they should be sent, state that they must be delivered within 30 days and specify the date when that 30 day period ends.

Step 2 - The Landlord shall "have regard to" any observations made and if another contractor is nominated by the tenant then the Landlord must try to obtain an estimate from the nominated person.

Step 3 - The Landlord must obtain estimates and give the Lessees a statement setting out the amount of at least two estimates, and where observations have been made, give a summary of the observations and his response to them, and he must make all estimates available for inspection.

Step 4 - The Landlord must invite observations on the estimates within 30 days.

Step 5 - The Landlord must have regard to any observations made in respect of the estimates.

Step 6 - The Landlord may then enter into a contract.

7.4 By Section 20ZA(1) of the 1985 Act, "where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements".

8. The Representations

8.1 With regard to the flank wall, Mr Mackenzie accepted that no Section 20 notice has been served but he submitted that in the circumstances it was reasonable fo the Landlord to have proceeded with the rebuilding of the wall whilst the contractors were on site and the scaffolding in place. The Landlord had obtaine a surveyor's report which confirmed that the work was necessary. He asked the Tribunal to exercise its discretion to dispense with the consultation requirements

for the flank wall work. The Applicants did not agree that the consultation procedure should be dispensed with for this work.

8.2 As far as the consultation procedure carried out in the case of 34A and 34B Greenhill is concerned, the Respondents did not seek to rely on the Section 20 notice served on 9th November 2005 as being the effective notice for the works specified in that notice. It was the notice of 24th February 2006 which was relied upon. Mr Mackenzie submitted that the Respondent had complied with the consultation procedures but "in a roundabout way" and relied on the case of Martin v Maryland Estates (1999) 31 HLR 218 CA as being authority for this being acceptable. This notice (Step 1 in the consultation procedure) was accompanied by two estimates (Step 3 in the procedure) but it also referred to an estimate which had been sent with the 9th November notice which was not enclosed with the 24th February notice.

8.3 The 6th March 2006 Section 20 notice (Step 1) also contained two estimates (Step 3) but only one estimate for external painting and one estimate for the roofing repairs instead of two for each procedure.

8.4 The Lessees had responded to the 24th February notice on 19th March 2006 by stating that they favoured Fordingtons but wanted them to quote against their own schedule of works and not the Landlord's. The Lessees claimed that the Respondents had failed to take their observations into account as they had not asked Fordingtons to do this. The Respondents claimed that due to the Applicants' letters to Fordingtons they were aware they were no longer interested

in doing this work. They were only required by the Act to have regard to the observations and that this the Respondents had done by ascertaining that Fordingtons were no longer interested. This was disputed by the Applicants who said that their enquiries of Fordingtons had revealed that they were prepared to do the work.

8.5 Mr and Mrs Jobson's suggested contractor, in response to the 6th March notice had, Mr Mackenzie claimed, been considered by the Respondents. The suggestion had been discounted because, first, the document submitted by J F Building Services was stated to be an estimate rather than a quotation and secondly it did not provide a figure for the cost of scaffolding as had the Respondents' contractors. Many items were "provisional" sums. Consequently, it was submitted, the Respondents had had regard to the observations but had reasonably rejected them.

8.6 The Applicants submitted that there had been no "paragraph b" statements sent by the Respondents to the tenants at any time giving reasons why their observations had not been acted upon. The Respondents accepted that they had not done this.

8.7 As far as the works being reasonably required was concerned, the Applicants maintained that it was not necessary to have re-built the flank wall and that the existing bricks were in reasonable order and could have been turned round. The extra cost involved had not therefore been reasonably incurred. The

Respondents relied on a surveyor's report which it obtained to support its case that the work was reasonably necessary.

8.8 As far as the reasonableness of the cost of the works was concerned, the Applicants suspected that some of the work that had been carried out and for which they were being asked to pay, had been for the sole benefit of the Respondents' flat and that they required to see a breakdown of the cost of each individual item so that this could be checked. They had received no explanation as to why the amount claimed was higher than the estimates received and were suspicious that five contractors had been employed whereas previously one contractor had been involved who had brought in sub-contractors where appropriate. The Respondents offered to provide this breakdown and the Tribunal asked for this to be done and submitted with any supporting paperwork to the Applicants and the Tribunal within 7 days of the end of the hearing. Mr Albin explained that GRP who dealt with the flat roof was a sub-contractor of Dave Clarke roofing but that he had submitted an invoice direct to the Respondents as it had been convenient for him to do so.

8.9 As for the insurance premium, the Applicant claimed that the insurance taken out by the Respondent was under a commercial policy which included cover for items which were not relevant to Greenhill. The Respondents said that insurance was effected through a broker and that the figure was reasonable.

9 The Tribunal's findings

9.1 The Tribunal found, as had been admitted by the Respondents, that the Section 20 consultation procedure had not been complied with in respect of the rebuilding of the flank wall.

9.1.2 The question for the Tribunal to decide, therefore, was whether it should dispense with the consultation requirements for this work or whether it should limit the amount that the Respondents could recover for this work to £250 per flat.

9.1.3 It had been contended by Mr Mackenzie that the need for this work had been discovered during the course of the other work, that the scaffolding had already been erected and that it would not have been possible to comply with the requirements or apply to the Tribunal for dispensation without losing a considerable amount of time and incurring more cost. He had conceded, however, that his description in one letter to the Lessees of a wall in serious danger of imminent collapse had not been correct and that he had got that wrong. Indeed the surveyor's report, whilst recommending that the work be done, did not bear out the view that the work had to be done urgently. The Tribunal considered that, had there been a danger of imminent collapse, a decision of the Tribunal could have been obtained on an emergency basis within 7 to 10 days. In this case it was unlikely that the Tribunal would have considered the works to be sufficiently urgent to dispense, in advance, with the Section 20 procedure. An application for a retrospective dispensation could have been made immediately after the works had been carried out, but despite having had

every forewarning that the Applicants intended to make the Section 20 requirements a big issue in this case, no application for dispensation under Section 20ZA had been made and had still not been made at the hearing date. Mr Mackenzie submitted that it was obvious that he would be asking the Tribunal to dispense with the consultation requirements but the Tribunal considered that such matters could not be assumed or taken for granted. Normally the submission of a formal application and payment of a fee is required.

9.1.4 The Tribunal decided that this was not an appropriate case for it to exercise its discretion to dispense with the consultation requirements with regard to the flank wall and that it would not be reasonable to do so. This was not a case of an emergency. The works could have been postponed to enable the procedure to be carried out. This might well have been inconvenient to the Landlord but the requirements are there for a purpose, namely to afford some protection to Lessees who are to be asked to contribute, sometimes large sums of money, towards the cost of major works and they are not to be dispensed with lightly. The Tribunal decided therefore that the Lessees' contributions towards the cost of the work to the flank wall would be limited to £250 per flat. The Tribunal did accept the evidence of the surveyor instructed by the Landlord who recommended the rebuilding of the wall.

9.2 The Tribunal found, as also conceded by Mr Mackenzie, that the consultation procedure had not been strictly complied with in respect of other works for which a Section 20 notice had in fact been given. Mr Mackenzie submitted, however, that although this was the case the Landlords had acted reasonably and had

endeavoured to keep the Lessees informed by supplying them with copy quotations. What had happened was that two stages of the procedure had been conflated into one, with estimates having been provided at stage 1 instead of at stage 3. In the case of Martin v Maryland Estates Limited some works were dealt with under the Section 20 procedure "albeit in a somewhat roundabout way" and other works were carried out without an attempt at complying with the consultation procedure. The appeal in that case concerned only the works where no Section 20 notice had been served, implying that a compliance with the procedure, but not strictly in the correct order, was acceptable. That would appear to be what the judge at first instance found and this was not appealed against by the tenants.

9.3 The Tribunal found that there were some similarities between the case under consideration and that of Martin v Maryland Estates Limited. In that case the Section 20 notice enclosed a schedule for which estimates had been obtained from two builders, a statement to the effect that it was proposed to accept the lower estimate and a stated intention that the work would not begin until just over three months' time. Thus, steps 1 and 3 of the consultation process had been condensed into one, just as in the case of 34A and 34B Greenhill. The invitation to make observations does not, however, appear to have been mentioned in the Section 20 notice in the Martin case, but had been included in a previous letter sent by the Landlord to the tenants of 34A and 34B Greenhill.

9.4 It should be noted that this case was decided before Section 20ZA of the 1985 Act and the current consultation regulations came into force. Mr Mackenzie

submitted that as the provisions under the previous Section 20 (9) which was concerned with the discretion to dispense with the consultation requirements and Section 20ZA were very similar and that the previous case law still held good. This was not accepted by the Applicants who submitted that it was not sufficient for the procedure to be dealt with "in a roundabout way" and that the whole thrust of the legislation more recently had been to impose greater consultation requirements in order to provide greater protection for Lessees.

9.5 In Martin v Maryland Estates Ltd the court held that the dispensation of the consultation requirement required a two stage approach. First, the Landlord had to show that he had acted reasonably in informing the Lessees of what was intended to be done and secondly, if the Landlord had overcome that hurdle the court or Tribunal had to exercise its discretion as to whether or not to dispense with the consultation requirements.

9.6 The Tribunal decided that there was a subtle difference between Section 20(9) of the 1985 Act which applied when Martin v Maryland Estates Limited was decided and the current law under Section 20ZA of the Act. In the former case the requirements could be dispensed with if the Tribunal was satisfied that the Landlord had acted reasonably. Under Section 20ZA the Tribunal has to be satisfied that it is reasonable to dispense with the requirements. Although the test is therefore slightly different, in practice it is unlikely that a Tribunal would dispense with the consultation requirements and find it reasonable to do so if it did not find that the Landlord had acted unreasonably.

9.7 In the case of the Premises, the Tribunal found that the Respondent had acted reasonably as far as keeping the Applicants informed in supplying information and estimates was concerned. Furthermore, the Tribunal accepted that the Respondent had "had regard to" the Lessees' representations albeit that it did not comply with their requests. Three estimates had been supplied in respect of the main works. Although only one estimate had been supplied by the Landlord in respect of the painting and roofing works with the 6th March notice, the Lessees had also had the benefit of an estimate from Fordingtons of September 2005 and their own estimate from J. F. Building Services to make a comparison. Furthermore, the Lessees have not been prejudiced as the Lessees' own estimate for the roofing repairs was £1250 more than the Landlord's and as far as the painting was concerned, the Landlord's estimate was approximately £240 more than the Lessees' estimate but the latter did not include the cost of scaffolding.

9.8 The Tribunal therefore decided that it was reasonable to dispense with the strict compliance with the consultation procedure for the works for which purported Section 20 notices had been served by the Landlord. This does not mean to say, however, that the Tribunal found all these costs to be reasonable. The Tribunal found that the following sums were reasonable:-

David Clark Roofing	£2000.00
GRP Flat Roof Systems Ltd	£499.38
Dove Decorating	£3395.75
Guttering	£400.00
Lintel repairs	£750.00
Pointing	£1500.00
	£6045.75

In reaching the above conclusion for the pointing the Tribunal considered that credit had not been given for the fact that much of the pointing that had been quoted for was rendered unnecessary by the demolition and rebuilding of the flank wall. The Lessees of flats 34A and 34B are liable to pay one third of the costs of £6045.75 set out above.

9.9 The Tribunal found that the sum of £193.37 per flat for buildings insurance was a reasonable amount particularly as the building has been converted into flats and was not purpose-built as flats. The policy does cover some items that may not be required in this instance but the policy is no doubt an "off the shelf" policy and it would be more expensive to tailor-make the policy to the precise requirements of this building. In the Tribunal's experience it was unlikely that a policy could be found significantly cheaper than the policy taken out by the Landlord in this case. It is understood that the Applicants have already paid the Landlord their proportion of the insurance premium, in which case it is not necessary for the Tribunal to make an order for payment in respect thereof.

9.10 The Tribunal finds therefore that the Applicants are liable to pay to the Respondent service charges in respect of the matters in dispute in this case of one third of £6045.75 plus £750 (for the flank wall) :- i.e. £2265.25

9.11 As the Applicants have succeeded in reducing their liability for which they had to make application to the Tribunal the Tribunal does make an order under Section

20C of the 1985 Act so that the Respondent will not be able to add the cost of the Tribunal proceedings to any future service charge demanded.

10. In Conclusion

10.1 Arising from the evidence and the Tribunal's consideration of this case, it is appropriate to add some observations as to their determinations. The Applicants have succeeded with a substantial reduction to the amounts they must pay as service charges, which will doubtless be a salutary lesson to the Respondent of the need for proper consultation with lessees before undertaking any works that may lead to a service charge demand exceeding £250 per flat in the future. The Tribunal does not consider however, that the Applicants have always acted appropriately throughout. It will have been insensitive of the Respondents to expect the Applicants to accept a change in the management and repair of the building from the arrangements which previously operated, without some careful handling and discussion. The Applicants' reaction to the Respondents was at the outset one of obduracy in requiring management and repairs undertaken in the way they required, irrespective of the requirements of the lease. That approach changed to outright hostility with the Applicants writing directly to the landlord's builders, Fordingtons, with the implication that the Respondent may not be financially sound and stating there could be difficulties over payments, as the lessees were not prepared to contribute their share. It would not be at all surprising if contractors become reluctant to be involved in what could turn out to be a "hornet's nest" of a difficult situation as the letter implied.

10.2 Where, as in this case, there are no independent managing agents, this case reveals what the Tribunal considers to be a fundamental misunderstanding by the lessees of the respective rights, responsibilities and obligations under their leases. The landlord has responsibility for arranging the building insurance and maintaining the external structure of the building, but it is the landlord who enters into contracts with builders. The landlord must comply with the statutory consultation procedure we have outlined in order to recover costs for works exceeding £250 per flat. That is the lessees' protection. The lessees cannot require any particular contractor being used, or insist on how the contract is undertaken and administered. The lessees cannot for example require individual to be invoiced by contractors. Whilst lessees can make observations and the landlord must "have regard to" those observations, if the landlord does not accede to those observations the tenants' rights are to apply to the Tribunal to consider the reasonableness of service charges and work done, not to interfere with the landlord's contractors as in this case.

10.3 It is very clear to the Tribunal that there has been a fundamental lack of communication and effective management of the building in this case. At the hearing, Mr Albin agreed that this case arose largely from a breakdown in communication. Mr Albin also accepted that he was unaware of the Service Charge Residential Management Code, published by The Royal Institution of Chartered Surveyors, and approved by the Secretary of State under the Leasehold Reform, Housing and Urban Development Act 1993. Mr Albin indicated he would obtain a copy of the Code. That Code sets out good practice in respect of the management of residential leasehold properties, both from a

freeholder/landlord position and for the benefit of the lessees/tenants. The Tribunal considers that it is essential there is effective and continuing communication between all parties and for a better understanding of their rights and obligations so that the future management of 34A & 34B Greenhill will be greatly improved.

Dated this 5th day of January 2007

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D. Agnew LLM
Chairman