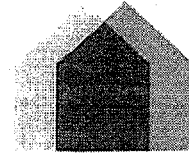


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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LON/00AS/LIS/2007/0030

Premises: Flat 121 The Forresters, Winslow Close, Pinner,
Middlesex HA5 2QY

Applicants: (i) Stephen Paul Clark
(ii) Carolyn Jane Clark

Represented by: Ms. A Cafferkey-Counsel
Mr. T Crittenden-Solicitor of Campbell Hooper
Solicitors

Respondents: The Forrester Eastcote Ltd

Represented by: Mr. P Jones-Counsel
Mr. R Wilson-Turner & Deberhams Solicitors

Tribunal: Ms. MWDaley Chair
Mr. PMJ Casey
Mr. C.P Gowman

Date of Hearing: 18/07/07

Date of Decision: 07/09/07

S. 18 of the Act defines service charge as

“(1)...service charge means an amount payable by a tenant....as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connections with matters for which the service charge is payable...”

Section 19 of the Act provides for the limitation of service charges on the grounds of reasonableness as follows:

(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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(3) An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—

- (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred

- (b) whether services or works for which costs were incurred are of a reasonable standard, or

- (c) whether an amount payable before costs are incurred is reasonable

The Lease

Description of the Premises

9. The Applicants' flat is situated in a development called The Forresters which was constructed in 1987 and consists of two separate blocks of flats, the North Block comprises 42 apartments and the South Block 79. No 121 is situated in the South Block. Both blocks are within a gated development which is set in landscaped grounds of approximately six acres with many mature trees. The blocks are red brick on four storey and comprise mixed sized apartments including "penthouse apartments" on two floors with balconies to the upper floors which are accessed through patio doors. Above the common entrances full height fixed windows are installed (These are referred to as Butterfly windows). The windows within the individual apartments are softwood double glazed windows the majority of which incorporate opening casement sections which have an arched fillet. The Tribunal visited The Forresters on 21 June 2007 and in the course of the inspection viewed no 102 which was a penthouse apartment which had taken part in the pilot project and had had some UPVC replacement windows. The apartment was light and airy with well proportioned rooms. The Tribunal inspected the windows, and noted that the interior finish on the windows is a white plastic. The Tribunal also inspected the exterior of flat no 101 which had also taken part in the pilot project and noted the finish of the exterior of the single replacement window installed there.

10. The Tribunal carried out a brief external inspection including the garden elevations of the South Block, and also inspected the exterior of flat no 121. The condition of one window to the flat below the Applicants' flat was very poor, and the external cill had fallen off. The Tribunal noted that some of the windows had flaking paint and there was evidence that some of the windows were in disrepair although many of the windows including those of the Applicants' flat on cursory inspection did not appear to be defective or in a state of disrepair. The Tribunal were also able to observe the condition of the rainwater goods and noted the condition of the fascia boards and soffits.

The Hearing

terms of his instructions. He had been instructed to comment on the contents of a report prepared by Peter Elford and to provide technical advice. In his report Mr Garavini, stated that he had been asked by his instructing solicitors to assume that he accepted the detailed report of Mr Sumner of the Project & Building Consultancy as to the condition of all the windows in the blocks, and he stated that “...*in general terms it provided an accurate description of the state of repair of the windows at the time the report was prepared.*” Para 1.3.2. He also stated that his findings concerning the condition of the windows at flat 121 mirrored those of Mr Elford.

20.

21. The issues addressed in his report were set out in Para 1.4.1, one of the specific issues that Mr Garavini was asked to address was to comment on the need for replacing the existing windows. In his evidence in chief he stated that all of the windows were capable of being repaired and in his view with suitable repairs carried out, the life expectancy of the windows could be prolonged by 10-15 years. He also stated that in his view replacing the existing windows with UPVC units amounted to an improvement, rather than a repair, as there would be an improvement in the insulation and the sound-proofing of the premises (set out in 2.2.18 of his report).

22. Mr Garavini also considered the economic argument for replacing the windows with the suggested UPVC; in 2.2.16 of his report he conceded that over the whole of the next 15 year period, it would be cheaper to replace the current timber windows with UPVC now when taking into account the ongoing maintenance cycle that would be required if the existing windows were retained. However he then stated that the landlord was firstly bound by his obligations to repair, maintain and redecorate the existing frames as repairs were both “*technically possible and properly required*” see Para 2.2.17.

23. At Page 293 of the bundle he had set out the costing of maintaining and decorating the existing windows over a 15 year life cycle with cost incurred in 2006, 2011, 2016 and 2021. He had estimated the total cost of maintaining and decorating the existing windows as £787,000 and the cost of replacement windows with UPVC as £308,000 with a difference in cost of £479,000.

impact of the 2012 Olympic Games on the availability and cost of building trades services.

27. Mr Garavini also stated that technically the windows could be repaired, although this was more expensive.

28. In re-examination Ms Cafferkey asked about the redecoration work that had been undertaken to the North block. Mr Garavini considered that the problems with failing and flaking paint could be due to the specification of work. Mr Garavini also stated that more extensive repairing of the windows could have slowed down the rate of disrepair. In answer to question 5 of the questionnaire all the experts had been asked by the parties to complete prior to the hearing Mr Garavini had stated that an epoxy resin repair system could have been used to make good the areas of rot and defective mastic seals. In his answer he set out that this should have been undertaken at least 5 years ago. He indicated that the costing at page 666, which was an estimate for redecorating, was subject to consultation and a lower figure for the actual work might be achieved. He reiterated that in his view the windows were still capable of repair.

29. **Evidence of Mr Roy Ilott**

30. Mr Ilott is a chartered building surveyor, of Roy Ilott & Associates 46-48 East Street Epsom. He had been instructed by the respondents and his report starts at page 377 of the bundle. In his report he considered both the reports of Mr Elford and Mr Sumner and at Para 10.12 of he states- "*Following my limited inspection, I consider the report by Mr Sumner is reasonable as to the condition of the windows.*"

31. Mr Ilott accepts the percentages for disrepair given by Mr Sumner as reasonable and that the conclusion in Para 5.1 of his report (set out below) as reasonable. In Para 11.11 he states-: "*In my experience, windows of this age, construction and design do not have a long life, even if regularly painted, because*"

disrepair. Mr Illott stated that he could not speak to the condition of all of the windows; he had only photographed those in the most obvious disrepair.

36. Counsel also challenged the comments in Mr Illott's report at page 394 of the bundle that dealt with the life cycle of the windows. Mr Illot accepted that repairs could extent the life of the windows to about 15 years, as in his view you could extend anything although he did not consider it prudent. He was asked about the condition of the fascia boards and soffits, He stated that they had not deteriorated as much, although in his view, it they were not replaced, then some of the savings of having UPVC replacement windows would be lost, as in his view, one of the major savings to be gained was in relation to access costs.
37. His analysis of the replacement cost was that the saving only started to occur after 10 years, in the first five years cleaning needed would be minimal and no major work would be needed until after 15 or 20 years. Although he could not comment on the percentages applied by Mr Sumner he considered that they were fair and reasonable and he agreed with Mr Sumner's comment in Para 5.1 of his report 11.10 "*I also consider the conclusion in the first sentence of paragraph 5.1 is reasonable 'Our findings indicate that regular redecoration of the windows has failed to prevent deterioration over the 19 years since installation.'*"
38. In re-examination Mr Illott, stated that in his view replacement with UPVC was the better option as partial replacement would result in a mis-match not a clean programme, he also considered that the UPVC would be a better match with the rainwater goods. He also considered that as the existing windows were double glazed replacing the windows with UPVC would not be an improvement as they have thermal insulation now. He considered that for certain people UPVC has negative connotations however he did not consider that repairing the existing windows was a prudent option. He also considered that the cost of the redecoration and repair was likely to exceed the estimate given by Bagnell's at page 666 of the bundle as supervision and repairs had not been included.

newsletter was over protective. Counsel queried whether his estimate at page 470 could be relied on.

45. Mr Sumner stated that he had taken a different approach; he had made allowance for the increased cost, due to the passage of time, the fact that there were more windows and the historical information.

46. Counsel asked about complaints that had been made about the painting of the North block. Mr Sumner stated that he did not think any criticism was justified about the standard of work as a whole.

47. Counsel asked about the time table and where within that there was provision for the S20 consultation requirements. Mr Sumner stated that he was not involved in the S20 notice, and the timetable was based on his estimate of how long the works would take. S20 issues, were handled by the board. He also confirmed that he had not sought the estimate from Bagnells for the redecoration at page 666.

48. Counsel queried why in a letter written by Mr Sumner to the company secretary of the Forresters on 15/03/05 and in his report in October 2005 no mention was made of the disrepair of the windows. Mr Sumner stated that he had not been asked to comment on repairs at that stage only on the feasibility of the UPVC replacement. He was aware of the disagreement between the board and the Clarks but considered this to be matter of policy. He stated that his condition survey was purely based on his findings.

49. Para 4.3 of his report stated

50. The condition of the timber components generally varies significantly between elevations, but in overall terms, rot was found in 15% of the cills and 11% of the casements, demanding at least partial renewal. The frames themselves were generally in better condition with only 2% rotting, though softening and splitting, which will lead to rot was more widespread. Windows to the garden elevation of G wing were noted to be particularly poor where 25% of the casements and 21% of the frames were found to be defective to the extent that repair will be necessary before redecoration and 73% of the cills to the garden elevation of D wing require attention. In one instance to this elevation replacement of the complete window has already proved necessary.

57. Mr Clark's evidence was set out in a witness statement at page 120, in his statement Mr Clark set out that he had purchased the premises known as 121 Forresters jointly with his sister Carolyn Clark in November 1988. In 1990 the tenants formed the Respondent Company, and the tenants became the shareholders in the company which performs the management functions for the Forresters.

58. In his statement Mr Clark gave evidence of a meeting which took place in January 2005. This was followed by a newsletter which set out that the lessees had mooted the idea of replacing the existing wooden windows with UPVC replacements. The reason stated in the newsletter which was at pages 461-464 of the bundle was to save money and that a feasibility study was being considered. Both Mr Clark and his sister were concerned about this. In paragraph 6 of his statement, Mr Clark set out that he considered that the use of UPVC would be of *Substantial detriment to the Forresters... (as) The Forresters was a high end residential development.* In his statement he said that the sales literature had referred to the Forresters as traditionally built. He referred to the windows which were dark stained wood with arched fillets. In his oral evidence Mr Clark informed the Tribunal that he had purchased the property at a cost of £134,500, which at that time was considerable more expensive than neighbouring properties of a similar size.

59. However Mr Clark and his sister had purchased the property because they were impressed by the level of security. In their view it was a cut above other properties and they both felt privileged to live in the Forresters. In his view the wooden windows were a fundamental feature of the buildings, and were a feature within the Applicants' flat. In the December 2005 Newsletter, details were given of a pilot project which was to take place in two flats. Mr Clark considered that the pilot scheme would fundamentally change the development, and was alarmed at the lack of consultation. At Para 10 he set out that he was disappointed as he considered that the proposed replacement windows looked characterless tacky and would be a poor replacement for the existing windows.

64. Mr Clark also considered that the windows were not being replaced because of the disrepair, and referred to the condition report on the windows at pages 187-273 of the bundle.

65. He also criticised the board and queried whether they would have undertaken statutory consultation concerning the replacement of the windows, without the issue being raised by the applicants' solicitor.

66. He also expressed concern about the company which had been nominated post tender, Professional Windows, as he did not consider that the financial position of the company was viable. Since the tender was accepted, Mr Clark in Para 24 of his statement noted that they had gone into liquidation.

67. In cross examination Mr Jones asked whether Mr Clark would ever countenance the windows being replaced, when repair was no longer possible, by anything other than wood. Mr Clark confirmed that he would not countenance the use of UPVC.

68. Mr Jones referred to the cost difference at page 293. This was £479,000. Mr Clark stated that he "*did not care how much the windows saved.*" Mr Clark also stated that it had not been explained to most of the tenants that they would have to contribute about £2500 to the cost of the replacement of the windows, and that they would not recoup a saving for over 15 years.

69. When Counsel queried whether the existing windows were of the highest quality. Mr Clark stated that the windows had a beauty that transcends the cost of the original material.

70. Mr Jones asked why Mr Clark was stunned about the motivation for replacing the windows and referred to page 470 which was a newsletter from Wing Commander Smyth which in Counsel's view adequately set out the motivation. Counsel also asked about the make-up of the tenants at the Forrester's and pointed out that many of them were elderly and had fixed incomes. Mr Clark queried whether the fact that their income was fixed meant that their income was small.

71. In re-examination Ms Cafferkey asked whether the options had been adequately explained. In Mr Clark's view they had not. He was asked about the wood used for the window and why, given that they were more than 18 years old, he

AGM to examine a suggestion made by a Lessee to replace the present softwood windows with UVPC.

79. He states in Para 5 on page 141 that an option of using hardwood frames was examined but a quote for the hardwood was twice that for UVPC and that *The Board also noted that piecemeal replacement of failed softwood frames would be very expensive a quote for one window was £1,740 inc VAT.*

80. At page 140 in the second paragraph of his witness statement Wing Commander Smyth stated “Throughout *all stages the Board adopted a measured and responsible approach...Lessees were kept fully informed by means of regular Chairman’s newsletters and by briefings and discussions at AGM 2006 and EGM in March 2006.*

81. *They were fully consulted during the Specification and Tender Phases in full compliance with S20 Regulations and were also invited to nominate contractors and some did. Due regard was paid to the comments raised by Lessees as we proceeded to the Tender stage.*

82. In cross examination, he was asked to explain who had prepared costing at page 94 which was the estimate of the cost of redecoration which showed a figure of £114,798 for 2005-2006. He stated that the figure had been prepared by the Company’s accountant from the estimate for the cost of work to the North Block which had been prepared by Mr Sumner. He accepted that the cost of the work could vary as this had happened with the North Block which had been less than estimated. However he considered that the need for extensive repairs to the existing windows prior to redecoration would have some impact on this figure.

83. Counsel also asked him about the photographs and how representative they were. He stated that he had only taken pictures where the window are in disrepair.

84. He denied that the vote at the AGM had not been representative of the wishes of the majority. He stated that 39 leaseholders had been at the meeting. He was asked about the tender, and confirmed that apart from Professional Windows the only other company that was being considered of the four who had tendered was DWL Home Improvements ltd.

include work which is merely desirable but not otherwise necessary. If the nature of the defect is such that it is possible and practical to repair it and the remedial work would not be futile then the covenantor will not generally be entitled to substitute some different subject matter, albeit that this substituted thing performs the same function as the original item. His obligation is to repair what he agreed to repair, however inconvenient that may be^[1].”

Counsel stated that the onus was on the landlord to prove

- (i) that the requirements of the lease are complied with;
- (ii) that the cost is reasonable and was reasonably incurred; and
- (iii) that there is sufficient reason for justifying a departure from the general propositions which was set out in paragraph 13 quoted above.

89. Counsel stated that the starting point was what was covered by the lease.

The Flat” was described in the First Schedule to the Lease; the Demised Premises means the Flat and the Car Space. The First Schedule provides that the Flat includes “the *interior of the treated surfaces of all the window frames and the immediate interior and exterior surfaces only of the windows in such frames.*”

90. The obligation to pay service charge was defined by reference to the expenditure incurred or notionally deemed incurred by the Lessor in complying with obligations set out in the Fourth Schedule. Therefore the service charge could only be demanded in respect of the Landlord’s obligations set out in the fourth Schedule. Counsel referred to clause 4(3) and paragraph 2 of the fourth schedule of the lease.

91. Counsel stated that the fact that the Respondent company was a leaseholder company did not mean that latitude should be given and referred to the case of **Fluor Daniel Properties Ltd and others –v- Shortlands Investments Ltd 2001** in this case the issue was whether the landlord was entitled to recover cost through service charges.

The relevant terms of the lease in that case stated “...to uphold maintain repair amend renew cleanse and redecorate and otherwise keep in good and substantial condition and as the case maybe in good working order and repair.

^[1] Dilapidations The Modern Law and Practice; Dowding and Reynolds; Thomson © 2004. *Creska Limited v Hammersmith & Fulham Ltd LBC* [1998] 3 EGLR 35.

in good and substantial repair. The lease only permits replacement or rebuilding of any part where necessary. The requirement of "necessity" is there to protect the leaseholder; it's a phrase that should be given its full effect. Further, clause 5(3) of the lease expressly provides that any alterations must not materially diminish the amenities enjoyed by the demised premises.

94. It is evident that the Landlord's concern in advocating the replacement of the windows is because of concerns about cost... (Para 24.) In addition to replacement being advocated because of long term future cost saving advantages, the windows were promoted as an improvement by the Board. As much is evident from the documents, from the respondent's statement of case and from the oral evidence given by Mr Clark from his contemporaneous notes of the presentation meeting at which it was said by a board member that the lessees would save £1million pounds on heating bills over the following ten years.

95. Counsel queries whether the premises are in disrepair and in her skeleton argument cites the reports of the experts:-

"The PBC report is the only report which purports to be a full condition survey.

There is no evidence of any disrepair to the fascias, soffits and rainwater goods nor has there been any attempt to provide such evidence.

96. Mr Elford's report provides more information as to repairs. It talks very specifically about the Clarks flat and advises that it would be prudent to replace one external 1900mm section of throated external cill which has cracked; in the same window one of the two dividing uprights require some attention because there was softness in 15mm of the timber; the weather bead on the fixed frame to the butterfly window of the second bedroom should be replaced; mastic seals need to be addressed. He is clear that the windows are in good condition and do not need to be replaced.

100. Counsel referred the Tribunal to *LB Wandsworth –v- Griffins and others (2000)*
26 EG 147

In this case a cost in use analysis supported replacement of the windows. The Local authority wished to replace a flat roof with a pitched roof and metal framed windows with UPVC. On appeal it was decided that the costs incurred were reasonably incurred. The Council were entitled to use a cost in use exercise.

Ms Cafferkey referred to a paper by Madeleine Cobbing for Islington Council on PVC Windows and Alternatives dated October 2004 the Survey's show that PVC is initially the cheapest but the whole life cost indicated that timber was the cheapest.

Counsel queried the reliability of the cost analysis produced by the Respondent.

101. Counsel stated at Para 49. "The Landlord committed itself to replacement of the windows with uPVC in mid 2005. No consideration was given as to whether the windows were in such condition as to actually need replacing. It is apparent that no other material was ever substantially considered and absolutely no attempt was made to carry out any cost in use analysis. The commitment to the replacement was further underlined by the installation of uPVC windows in two flats ahead of any discussion with the leaseholders. There was no need for this work to be done before discussion."

102. Counsel in Para 51 also queried whether the consultation was reliable as at the AGM, although there were 70 tenants who voted in favour there was no indication of which block they came from. Counsel also considered that the repairs had in part arisen as a result of the board only undertaking minimal repairs in the past and that the condition of the North block was not reliable as "*There has been concern about the quality of the work carried out on the North Block and the quality of the material used.*"

103. Counsel concluded that the question to be considered by the tribunal was whether the landlord has established with cogent evidence that the existing windows are in such a state of disrepair that their replacement is necessary? "The evidence, in my

But the provision is not in my view, simply or even mainly for the benefit of the tenants. It is also a provision of the benefit of the landlord. It enables the landlord to keep the building in repair at the tenants' expense. Under these leases however the relevant decisions regarding repairs to the exterior are the landlords."

At Para M the decision stated "It is for the landlord to decide how to discharge them. Provided it acts reasonably, it is for the landlord to decide how to go about the matter. The tenants cannot complain simply because the landlord could have adopted a cheaper method..."

106. Counsel considered that it was relevant that the landlord and the tenant's interests are in this case synonymous. If one considered the proposal based on a prudent building owner paying for the cost himself, then the owner would consider the cost reasonable.

Counsel then considered the experts reports, He stated that Mr Sumner's report was self evident. His report had stated that serious consideration should be given to replacing the windows, and he referred in particular to the disrepair that existed in the garden elevation.

Counsel also referred to Mr Alford's report at page 276 of the bundle.

107. Counsel invited the Tribunal to consider the photographs, and stated that although they provided a snapshot, both experts had agreed that you could not be certain of the full extent of the disrepair. The Fluor Daniels case made it clear that a great deal of latitude ought to be given to the Landlord, provided the Landlord acted reasonably. The Landlord was not bound to use the condition of the windows as his sole criteria.

Counsel stated that, Mr Garavini raised the issue of technical repair, he stated that you could replace where it cannot be repaired, some windows were in repair and some were not however this needed to be balanced by economics. The fact that not all windows are in disrepair is not the overriding factor.

He referred to **Postal Properties Ltd-v- Boots (1996) 41 EG 164**

a case in which the tenants argued that the replacement of the roof was premature and the specification was increased to a point where there was an irrecoverable

111. Counsel stated that the repairs were reasonable under section 19 of the Act.

Mr Jones final submission in relation to the Applicants' section 20 C application was that the lease provided that legal costs were recoverable, and that given there was no evidence of improper or oppressive behaviour on behalf of the Respondent it ought, if it succeeded to be able to recover its cost of proceedings through the service charge. It would be detrimental to the tenant owned management company if they were required to fund any shortfall from their own pockets.

The Tribunal's determination

112. The findings of the Tribunal

The Tribunal find that the Cost of work to replace the existing windows with UPVC replacement windows is reasonable and would be recoverable under section 18 & 19 of the Landlord and Tenant Act, as a service charge.

The Tribunal find that the Cost of replacing the Soffits and Fascia boards and rainwater goods is not reasonable, and would not be recoverable as a service charge under section 19 of the LTA.

The Tribunal have decided not to grant the Applicants the relief sought in section 20 C of the Landlord and Tenant Act.

113. The Reasons for the Tribunals findings

The Tribunal consider that the issues in this application are whether the cost that the Respondent propose to incur in respect of the replacement of the windows and the soffit and rainwater goods are properly to be regarded as service charges, and if so whether the proposed cost are cost that would be reasonably incurred .

In Counsel for the Applicant's skeleton argument she stated that the starting point was the Lease, in particular the fourth schedule of the lease Para 2 at page 172, which stated " *To keep the Retained Parts in a good and substantial state of repair and condition including where necessary the replacement of any conduits plant lifts and other fixtures and fittings forming part of the Retained Parts PROVIDED that nothing herein contained shall prejudice any claim the Lessor may have against the Lessee in relation to any loss or damage suffered by or*

118. The Tribunal have also considered the evidence of the Applicants and find that although they seek to argue that the windows do not need to be replaced. It was not disputed that the window in the flat below was in need of replacement. Given this the reasonable minded Tenant referred to in Proud and Hart, whilst helpful, may differ in opinion depending on whether their property had windows that needed replacement, or windows which had not yet deteriorated to that condition, and for this reason the Tribunal have not specifically adopted this test.

119. It was also clear to the Tribunal that at the heart of this dispute is a difference in philosophy. Both the Applicants describe the pride that they have in their flat in the Forresters. Mr Clarke in his evidence informed the Tribunal that the wooden windows were a feature in the décor within the Flat jointly owned with his sister, Ms Clarke in her witness statement describes how in her view *The Forresters had a certain style that made it different from just any other set of apartment blocks. They are set in over six acres of parkland and felt that they blended in well with their surroundings given their size...The apartments at The Forrester were a lot more expensive than properties that were on sale in the area at the time but we both considered we were paying for something a little bit special.. I thought that to remove the windows and replace them with something that was unlike what was currently there was tantamount to architectural vandalism.*” (Para 7 of Ms Clark witness statement)

120. In Cross-examination by Mr Jones, Mr Clarke stated that even when it was clear to him that all the windows would need replacing he would not countenance the use of UPVC. Equally in Wing-Commander Smyth evidence the existence of windows that were in a state of disrepair did not appear to be the major focus of his consideration he stated at page 141 of his witness statement that “ *it was to seek a solution to reduce the ever escalating costs for redecoration and to endeavour to keep the service charges to a reasonable and acceptable level that the board proposed at the 2005 AGM to examine a suggestion made by a lessee to replace the current soft wood windows with UPVC windows.*”

reply as question 19). Mr Illot states of Mr Garavini's evidence ... "*... and we both agree that repair and redecoration on the first or next paint cycle will be cheaper than UPVC replacement cost but that future cycle cost will be higher and thus whilst not stated the first cycle would be a waste of money..*"

125. Given the view of all of the experts the Tribunal finds that the windows are in disrepair and given again all three experts view that replacement with UPVC would be the most economically sensible way to deal with the disrepair also find that replacement of the windows with UPVC is justified.

In the course of submissions the Tribunal were referred to A report prepared by Ms Cobbing for Islington Council on PVC Windows and Alternatives dated October 2004 The Tribunal were informed that this Survey's concluded that PVC is initially the cheapest but the whole life cost indicated that timber was the cheapest. The Report whilst useful, considered a number of factors including environmental impact, and it was clear to the Tribunal that the timber referred to was hard wood, rather than the soft wood that was used in the developments.

126. The Tribunal were also referred to a number of cases in particular *Fluor Daniel Properties Ltd v Shortlands Investment Ltd* [2001] 2 EGLR, and to *Redway v London Borough of Southwark* LON/00BE/LIC/2004/0016

Ms Cafferkey stated in referring to this case

"As to whether there can be any replacement at all, a control is perfectly obviously there, by reason of the requirement that it must be necessary; the replacement must be reasonable. If renewal or replacement is not reasonable it is not repair."

127. However in the Fluor Daniels case at M page 110

The obligations have been cast upon the landlord It is for the Landlord to decide how to discharge them. Provided it acts reasonably, it is for the landlord to decide how to go about the matter.

128. The Tribunal also considered the Redway case, and it is significant that the Chairman at the LVT indicates in the decision that the case was decided on its facts. The Tribunal was also referred to *Postal Properties Ltd-v- Boots* the

economic. As these items were not in disrepair the cost of their replacement would not be reasonable or recoverable through the service charge. The Tribunal found that the repairing obligation in the lease could not be interpreted in such a way as to enable the Respondent to replace these items and recover the cost through the service charge. The clause relating to additional services ought to be construed literally and can not be applied to such works.

131. The Tribunal have considered the Applicants application under section 20 C; given the findings of the Tribunal the Tribunal consider that it is reasonable in all the circumstances for the Respondent to be able to recover the cost of these proceedings as a service charge.

Chair.....

Dated.....*7th September 2007*