

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT  
PANEL**

**IN THE MATTER OF 27-29 COLLINGHAM ROAD LONDON SW5 ONU**

**IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27(A) (THE  
ACT)**

**CASE NUMBER LON/00AW/LSC/2007/0089**

<b>Parties</b>	<b>Mrs G L Lancaster</b>	<b>Applicant</b>
	<b>-and-</b>	
	<b>The Lessees of flats at 27-29 Collingham Road London SW5 ONU as shown on the attached Schedule</b>	<b>Respondents</b>

**Representation:**

<b>For the Applicant</b>	<b>Miss P Walsh - Solicitor of L Bingham &amp; Co Mr A Banyard Chartered Surveyor from Farrar Property Management Mr M Lancaster</b>
--------------------------	--

<b>For the Respondent</b>	<b>Mr N Davis – Flat 8 Mr P Roscow Flats 4 &amp; 18 Mr &amp; Mrs T Navassardian Flats 14 &amp; 15</b>
---------------------------	---

**Date of Application**      **14 March 2007**

**Date of Hearing**      **13 June 2007**

<b>Tribunal</b>	<b>Mr A A Dutton      Chair Mr I B Holdsworth BSc MSc FRICS Miss S Wilby</b>
-----------------	--

**Date of Decision**      **3<sup>rd</sup> July 2007**

## REASONS AND DECISION

### A. BACKGROUND:

1. This application was made by Mrs G L Lancaster under s27A of the Landlord and Tenant Act 1985 ("the Act") for the purposes of determining the reasonableness of future expenditure in relation to roof repairs. At a directions hearing held at the Tribunal on 3 April 2007 it is recorded under the preliminary section that the Tribunal is to identify the following issues to be determined.
  - (a) Whether the Applicant is entitled under the leases to carry out the proposed roof works at the property;
  - (b) The reasonableness and the recoverability of service charges in respect of the proposed roof works;
  - (c) If charges for the roof works are recoverable, the proportions of the costs of the works held by the Lessees.
  
2. During the course of the exchange of statements it also transpired that the Lessees had concerns as to the allocation of window refurbishment costs. At the Tribunal hearing on 13 June 2007 the Respondent submitted a further statement of case in which they confirmed that they did not wish to raise the allocation of window refurbishment costs with the Tribunal. Indeed for the purposes of these proceedings those Respondents who attended the hearing confirmed that they would not be seeking to question the quantum of the window refurbishment costs or that those would be allocated amongst the Lessees on what was a somewhat historic basis by reference to certain percentages, details of which were set out in the papers before us and which we shall as necessary refer to in due course.
  
3. The Applicants however indicated that notwithstanding this they would still ask the Tribunal to rule as to whether or not the costs of refurbishment of the windows should be payable by only those Lessees who had works done to their windows or whether they should be apportioned amongst the total number of Lessees irrespective of the works that were undertaken to their flat.
  
4. Amongst the papers before us we had a number of statements and responses, copies of lease to flats 6,10 & 20 and reports in respect of three authorities which the Applicants indicated supported their views of the apportionment issues. We will refer to those documents as and when necessary during the course of these reasons and in the Decision.

**B. EVIDENCE:**

5. At the Tribunal hearing Miss Walsh, who represented the Applicant, called evidence from Mr A D B Banyard, a Chartered Surveyor with Farrar Property Management and who had relatively intimate knowledge of the premises for some years. We also heard from Mrs Lancaster's husband, Michael.
  
6. Mr Banyard's evidence was contained in the witness statement that he had made in May 2007. This gave a history of the service of the s20 Notice relating to the works for the property and the inspections he carried out and we noted all that was said. It is right to record at this stage that at the commencement of the hearing those Respondents present confirmed that there was no dispute about the cost of the works, nor that the works were required. So far as the Respondents were concerned the issue was who should pay for the works to be carried out to the various roof terraces at the property.
  
7. Mr Banyard was unable to confirm the number of flats that had roof terraces but he thought it was between six and seven. He told us that in his view the roof terraces consisted of the joists upon which wooden decking was laid, followed by an asphalt layer and then, in some cases, decorative finishes which comprised either tiles or wooden decking. He thought that in most cases the tile or wooden decking had been fitted by the Lessees of the flat that had use of the roof terraces. His advice to the Applicant was that the repairs to the roof would result in the removal of the decorative finishes and that it would be the Landlord's responsibility to replace those with as good a finish as had been there previously but ensuring that if decorative finishes were laid any adhesive used was inert and would not damage the asphalt layer. He was satisfied from his inspection that just about every flat roof at the property required repair. In support of this Mr Davis confirmed that his flat was suffering water ingress problems and there was no dispute from the Respondents that the roofing works were required.
  
8. We were told by Mr Banyard that the roof terraces were in all cases above habitable accommodation and that if they leaked this would cause problems to the Lessees below and it was, in his view, in everybody's interest to ensure that the roofs were kept in proper repair by the Landlord.
  
9. On the question of windows, Mr Banyard contended that the repair and maintenance of the exterior of the windows was the responsibility of the Landlord in that they formed part of the structure. There was some debate as to exactly what constituted a window and a window frame and in this regard Mr Banyard referred us to an exhibit to the documentation before

us which showed photographs of various windows and a definition of the window frame taken from an architectural dictionary.

10. Mr Lancaster was able to confirm the number of flats that had roof terraces and these were flats numbered : 7,8,10,12,19 & 20. Flats 9 & 11 had balconies but these had been the subject of work some time before which costs had, we were told, had been divided between the residents although Mr Roscow indicated that he had not accepted the position and had not paid his proportion. We were also told that flats 7,19 & 20 had decorative roof finishes and they would be required to be removed for the work to be carried out and would be reinstated at a cost of some £2160.00 per flat. The roof terraces for flats 10 & 12 that required repair had not apparently been tiled and accordingly there would not be that expense. We were told that flat 20 in which Mr Lancaster had lived with his wife had now been sold and that he had deposited with the Managing Agents an amount required to meet his obligation towards the repair costs. If the contribution payable exceeds the 8% which was set out on the schedule in the papers then the new purchaser would be liable for any additional sums.
11. Under questioning from the Respondents he confirmed that until this last repair schedule the balconies and the roof terraces had been repaired by the relevant leaseholders. It was however brought to his attention by Mr Banyard that certain cases may have impacted upon the repairing obligations and relying upon Mr Banyard's advice and that of his solicitors the Applicant was seeking to apportion the costs on the basis that the Landlord repaired the roofs and recovered contributions under percentages set out in the papers. He departed therefore from the previous historical basis where individual Lessees had paid for repairs to their own roof terraces. He also confirmed that the roof tiles to his property had been laid when the property was developed in 1983 but that others had changed the terrace surfaces over a period of time.
12. For the Respondents we heard from Mr Davis, Mr Roscow and Mr & Mrs Navassardian. The bulk of these submissions were made by Mr Davis and Mr Roscow. In the course of receiving evidence from the Applicants, the Respondents confirmed that insofar as they were concerned the only issue to be determined was who should pay for the repair works to the roof terraces and that in connection with this particular application they would be prepared to accept that the cost of any window works be divided between them on the percentage basis referred to in the papers before us. Mr Davis and Mr Roscow confirmed that they spoke for all residents in the building but that some Lessees had let their premises and although documents had been on display in the property for some time and

there had been no negative feed back, it was not possible for them to speak for each and every Respondent.

13. Mr Davis confirmed that when resurfacing work had been required to the flat roof to his property which at flat 8, he had paid those costs himself and that there had been an amicable arrangement with the Applicant over the years to deal with roof terraces on that basis. Matters had changed when the questions of the repairs to the balconies had been considered although apart from Mr Roscow all Lessees had in fact contributed on a percentage basis to the balcony repairs.
14. The Respondents' view was that the terms of the lease prevailed and that in the Respondents' reading of the lease the roof terrace fell within the demise of the particular flat and it was the responsibility of that leaseholder to pay for the works to that roof terrace. The same was also said for the windows, which the Respondents asserted fell within the demise of the subject premises and were therefore the responsibility of the individual Lessees. As we have indicated they were however prepared to take a pragmatic view on this application and not dispute the apportionment between the various Lessees. It was not however clear that they were prepared to take this pragmatic view forward should the circumstances arise again in the future.
15. Miss Walsh made submissions to us in which she relied upon the cases of *Ibrahim v. Dovecom Reversions Limited and others* a Chancery Division case heard before Mr Justice Rimmer in March 2001 and a short extract of the case of *Hallisey v. Petmoor Developments Limited* again heard in the Chancery Division before Mr Justice Patten in November 2000. Both cases, she asserted, assisted the Applicant in her view that the roof terraces were the structure of the building and therefore were the responsibility of the landlord to maintain. She took us to various aspects of the lease which we do not need to recite at this stage and various extracts from those two cases.
16. Insofar as the windows were concerned again she referred us to a High Court case, *Irvine v. Moran* heard before Mr Recorder Thayne Forbes QC sitting as Deputy Judge of the Queen's Bench Division in May 1990. Again she referred us to certain extracts from that case which we have noted and which we shall refer to as necessary in the Decision section of these reasons.
17. We hope the parties will allow us to limit the recounting of the oral and in particular the written submissions that were made. The papers were read by the Tribunal members

before the hearing and those matters as are relevant to the issues to be decided have been fully taken into account in reaching the decision.

**C THE LAW:**

18. The law in this case is found at s27A of the Act. It enables the Tribunal to determine how costs to be incurred are to be payable, by whom, when and the circumstances surrounding same. We therefore have jurisdiction to consider, in this case, how the costs which are not disputed, for the windows and the roof should be apportioned between the Lessees in the property. The issues are therefore quite defined.

**D. DECISION:**

19. We will deal firstly with the question of the windows. We turn to the lease for guidance as to whether the windows are a landlord or a tenant's responsibility. In the Second Schedule to the leases that were provided to us, which we were told were uniform, the description of the property is, after reference to the plan, as follows. *"Demised premises include the floors and ceilings joists or beams on which the said floors are laid, interior walls and the interior faces of all walls of the demised premises and doors and doorframes, windows and window frames of the demised premises and all pipes and wires serving the demised premises but EXCLUDING everything below the said floors (save for the said wires, pipes, joists or beams aforesaid) and above the said ceiling (save for the said wires or pipes aforesaid)".*
20. At paragraph 3.1 of the Lease the Tenants repairing covenants are described as follows: *"From time to time and at all times during the term well and substantially repair, cleanse, maintain, amend and keep in repair all parts of the demised premises and the landlords fixtures and fittings therein (including any radiators and the window frames) but excluding the roof, structure and foundations of the demised premises and as occasion requires to clean and keep all windows cisterns boilers electric wires cables and gas and water pipes drains tanks and soakways in the demised premises and all ball cocks in good order and condition".*
21. In the Sixth Schedule at paragraph 1 we find the landlord's repairing obligations these are carried forward from paragraph 4 in the Lease where the Lessors covenants are contained. Paragraph 1 of the Sixth Schedule reads as follows:  
*"1. At all times during the said term to keep the external walls and the load bearing walls and the girders and timbers and roof and chimney stacks (if any) and exterior of the Building (including drains gutters and external pipes) and fences as belong to the Lessor in*

*good and substantial repair and also to keep the structure of the building (including the foundations thereof) and (so far as such matters are not the responsibilities of the Tenant under the covenants hereinbefore contained) all water tanks and cisterns electric wires cables and meters and gas and water pipes and meters and drains and soakways in good and substantial order and condition and to keep the common passageways staircases and entrance hall reasonably clean and lighted and repaired and decorated”.*

22. For the Applicant the case was simply that the external elements of the windows, which includes the frames, and lintels forming part of the exterior of the building are the responsibility of the landlord for repair, whilst the internal window elements specifically the sashes, sash cords, sash wheels, hinges and locking mechanisms and the glass of the windows together with the interior decoration of the window frames all fall within the responsibility of the lessees . The Applicant relies on the case of *Irvine v. Moran* which is not, it has to be said, on all fours with the current circumstances. This appeared to relate to short term lettings, that is to say leases for less than seven years, and referred to the Housing Act 1961. What the case did however seek to establish is a definition of the word “structure” and insofar as the windows were concerned the Judge in the case formed the view that the external windows did form part of the exterior of the building and could be deemed to be part of the structure. In our view it is the lease in this case which takes precedent and it is that document that we must look to first before we consider whether any authorities help. The definition of the demised premises has been set out above. It is our finding that the use of the word “interior” is not confined just to the walls of the demised premises but also to the doors and the doorframes, windows and the window frames. This is also consistent with the manner in which the front doors to the flats have been decorated. In the past we were told that they have been varnished by the landlord and the costs recoverable from the Lessees under the percentage provisions. Individual lessees have not decorated the exterior of their own front door. We find therefore that it is the exterior of the window frames is the responsibility of the landlord. Accordingly for all future purposes, costs associated with external works to the windows should be paid on the percentage basis by all Lessees although the interior upkeep for the windows which we find would include the ropes for the sashes and the interior ironmongery that may exist would be the responsibility of the individual Lessees.

23. We turn now to the more vexed question of the roof terraces. Again we must look to the leases for assistance. The definition of the extent of the property in the leases for flats 6 & 10 is the same in the Second Schedule. However, in the Second Schedule to flat 20 we find different wording and there is specific reference to the roof terrace of the premises by

word and by plan. This is not the same as the other two leases where the extent of the demised premises can only be understood by reference to the plan. For flat 20 the extent of the demise is as follows:

*"The demised premises include the roof terrace and conservatory above the fourth floor and the floors and ceilings the joists or beams on which the said floors are laid interior walls and the interior faces of all walls of the demised premises and doors and doorframes windows and window frames of the demised premises and all pipes and wire serving the demised premises but EXCLUDING everything below the said floors (save for the said wires pipes joists or beams aforesaid) and above the said ceilings (save for the said wires or pipes aforesaid)".*

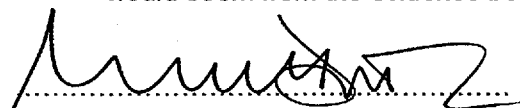
24. It seems to us therefore that somewhat strangely the joists that support the floors are the responsibility of those Lessees in whose flat the floors are found. It means therefore that each Lessee is responsible for maintaining the surface of their ceilings but is responsible for maintaining not only the floor surfaces but the beams below. In our experience this is somewhat unusual as the joists supporting the floors and the ceilings below, are ordinarily deemed to be structural and within the repair of the landlord. The question therefore that we need to answer is whether or not the joists and beams beneath the roof terraces are the responsibility of the Lessee, because the roof terrace is a floor, or whether in fact the roof terrace is excluded from the demise save for the surface of same by reason of it being a roof. Under paragraph 3.1 of the Lease as we have indicated above the roof is specifically excluded from the tenants repairing obligations.
25. The Applicants referred us to the two cases of *Ibrahim v. Dovecom Reversions Limited and others* and *Hallisey v. Petmoor Developments Limited*. These cases can be of assistance but only if the lease does not clarify the position.
26. It seems to us that the simple question we need to answer is whether or not the roof terrace is a floor, in which case it would seem that the beams beneath are the responsibility of the Lessee and presumably therefore the covering of same, or whether they constitute a roof which under the terms of a lease is excluded from the tenants obligations to repair. We have considered the *Ibrahim* case and all that is said. We find that the roof terrace has a primary responsibility to afford protection to the flat below. It is a secondary benefit to the Lessee of the particular premises that they can use the roof terrace for enjoyment purposes. As its primary function is, in our finding, to provide support and protection to the flat beneath, it is more properly defined as a roof. In those circumstances we find that the terms of the lease clearly exclude the roof from the tenants repairing obligations and it is



not necessary therefore for us to inspect in detail the findings of the *Ibrahim & Hallisey* case. If there is any doubt as to the terminology then we find that the terms of the lease should be construed against the Landlord and it seems to us that to place the repairing obligation on the landlord does just that. However we are satisfied that the lease is clear enough in its intention and although the word "roof" is used in the singular we find that it does include the various roof terraces. It should also be noted that the Respondents have not objected to being responsible for the payment of repairs to the flat roof which lies at the top of the premises and which affords protection to flat 20. It appears clear from the definition contained in the Second Schedule to the lease of flat 20 that the roof terrace is included within the demise. This is the more so when one considers the lease plans where the terrace at the level of the living accommodation is described simply as that. Whereas the plan of the top floor specifically refers to "roof terrace". Accordingly if the Respondents case was correct then the roof terrace above flat 20, which is at the top of the building, would be the responsibility of the Lessee to maintain. Yet the Respondents confirmed to us at the hearing that they accepted that that roof area was repairable by the landlord and the costs recoverable under the percentage basis. This seems logical as we understand that flat 19, which also shares the top floor of the premises does not have the roof demised and would therefore on anybody's argument be the responsibility of the landlord to maintain. Accordingly we have no hesitation in finding that the roof terraces in the building are the landlord's responsibility to maintain and that the costs of same have to be divided between all Lessees on the percentages which we understand are not in dispute. This seems to us to also be a practical solution as to allow individual Lessees the responsibility of repairing roof terraces when they afford protection for flats below is a recipe for potential conflict.

26. No submissions were made to us on the question of costs. We were not asked to make any Order under s20C of the Act although the directions indicated that the parties should make such applications if they wished. We therefore do not make any Order in that regard but we hope that for the purposes of goodwill between the parties that the question of the costs of these proceedings can be dealt with amicably between the Applicant and the various Respondents.

27. We hope our decision will enable the parties to live amicably together as they have done, it would seem from the evidence before us, for many years before hand.

  
.....  
Chairman

  
.....  
Date

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT  
PANEL**

**CASE NUMBER LON/00AW/LSC/2007/0089**

**Schedule of Repondents**

**Mr S M Ansari  
Mr and Mrs N Cerasoli  
Mrs V J Cohen  
Cordial Investments Ltd  
Mrs N Davis  
Mrs Paola De Cerato  
Miss B Frost  
Mrs L Hale  
Mr T P Hannon  
Mr and Mrs T Navassardian  
Miss M Ng Ms B Ng and Mr T Ng  
Miss P O'Driscoll  
Mr D S Pigger  
Mr P Roscow  
Mr R Sexton  
Mrs J Shaw and  
Mr and Mrs C J Thomas**