Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: **LON/00BH/LSC/2007/0263**

Applicant:	London Borough of Waltham Forest
Respondent:	Mr Lee Godfrey
Premises:	5 Chapel End House, Chingford Road, Walthamstow, London
Date of Application:	12th July 2007
Date of Oral Pre-Trial Review:	8th August 2007
Date of Hearing	19th November 2007
Appearances for Applicant:	Ms N Muir of counsel Mr P Reid (Finance Officer) Mr T Reynolds (Commissioning Manager) Mr R Lamb (Project Manager) all of Ascham Homes Ltd
	Appearances for Respondent: Mr Lee Godfrey (unrepresented)
Leasehold Valuation Tribunal:	Ms Helen Carr, Mr Raymond Humphrys and Mrs Rosemary Turner

THE APPLICATION

1. The Tribunal was dealing with an application under section 27A of the Landlord and Tenant Act 1985, as amended, ('the 1985 Act') for a determination whether a service charge is payable and, if it is, as to
    i. the person by whom it is payable
    ii. the person to whom it is payable
    iii. the amount which is payable
    iv. the date at or by which it is payable and
    v. the manner in which it is payable

2. The Applicant is the London Borough of Waltham Forest who are represented by their managing agents Ascham Homes Ltd. The Applicant is the freehold owner of the premises. Ascham Homes Ltd is an arms length management organisation wholly owned by the Applicant.
3. The Respondent was Mr Lee Godfrey who became the leaseholder of the premises sometime in1994.
4. The premises are 5 Chapel End House, Chingford Road, Walthamstow, London.
5. The issues which are relevant to the determination of this matter are as follows:
    (a) The respondent's liability, under the terms of his lease, to pay for the replacement of windows in his block in the course of a major works contract which was carried out between December 2000 and June 2001. The respondent was particularly concerned about his liability to pay when new windows were not installed to the premises.
    (b) the reasonableness of the costs of the new windows, the insulation works and the management fees charged by the Applicant.

The Tribunal's decision is that the service charges of £15,710.69 demanded by the Respondent are reasonable and are payable by the Applicant.

The salient parts of the evidence are given below under the appropriate heading.

Background

6. The Respondent purchased the premises sometime during 1994 at which time the windows to the premises had already been replaced by the previous leaseholder. The replacement windows were probably about 6 – 10 years old at the date of the purchase of the premises.
7. The premises were part of a small block of12 2 bed roomed flats which were constructed in the early 1950s. The block as originally constructed had Crittall windows which had been inserted directly into the brickwork of the block. The consequences of this type of window are known to be rust, warping, cracked panes and condensation and heat loss. However no evidence was provided to the Tribunal that the flats with these windows in the block were in poor repair.

8. Mr Reynolds gave evidence concerning the external pebble dashing, its colour and cracking but said in answer to the Tribunal that there was no written report on the condition of the exterior of the block of flats.
9. Similarly Mr Reynolds confirmed that whilst their evidence was that it would be more cost effective to provide external insulation than to remove the old pebble dash and relay it, there was no written report or survey to that effect.
10. The Applicant was concerned to upgrade its properties. The particular initiative that was a priority at the time of the works was to achieve the government's imposed targets set out in the 'safe and warm' initiative. This was in addition to their general maintenance obligations.

The Determination

The terms of the lease

11. Counsel for the Applicant drew the Tribunal's attention to the relevant clauses of the lease. For the purposes of this determination the relevant clauses which enabled them to carry out the works and charge for them were
    (a) Clause 3 (a) which (inter alia) enabled the lessor to carry out such improvements to the demised premises the Block the Reserved property and/or the Estate as the Lessors shall in its absolute discretion deem necessary.
    (b) Paragraph two within the third schedule to the lease which reserves to the Lessor the external main structural parts of the Block including the roofs roof supports foundations and external walls and parts thereof (but not the glass in the windows of the flats)
    (c) Paragraph one within the fourth schedule to the lease which specifies that the glass of the windows of the premises is part of the demised premises
    (d) Paragraph one of the ninth schedule which obliges the lessor to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts).

12. The Respondent argued that since the Applicant did not replace his windows and had not inspected them, nor offered to replace them, and that in any event the glass was the responsibility of the tenant and not the Applicant, it would be unreasonable to expect him to pay for the replacements to the block and the glass except in the communal areas.
13. It appeared from the evidence that the four leaseholders had replaced their windows presumably because the windows were faulty in one way or another. It is the remaining tenants who had the unsatisfactory original windows who benefited from this programme of works.
14. The Tribunal understands the Respondent's argument. In particular it is clear that the Respondent and not the Applicant is responsible for replacing the glass to the windows. However when a landlord is required to replace the window unit it is a natural consequence that its responsibilities will include the

new glass and in accordance with current regulations this will be double glazed. There is a considerable amount of case law covering this issue. Many leases include this clause to ensure that the leaseholders are responsible for breakages to the glass. In the opinion of the Tribunal **and it hereby determines the terms of the lease cover the works carried out and therefore the Respondent has an obligation to pay the reasonable costs incurred.**

15. However the Tribunal are concerned firstly that the Applicant did not make it clear to Mr Godfrey (and presumably the other long leaseholders) that the tendered price included replacing all of the windows in the block and that the variation for not installing these windows was relatively nominal – approximately £735 per flat plus fees. It appears to the Tribunal that a reasonable landlord would have made this clear to the leaseholders so that not withstanding their existing replacement windows they should have had the opportunity of having new ones installed. Further the fact that all four leaseholders had replaced their windows may indicate that the replacement was long overdue and that they were forced to act in advance of the landlord in order to maintain the value of their asset. If the landlord had carried out the replacement in good time this problem would never have arisen.
16. Secondly the Tribunal are of the view that the various letters sent by the Applicant are not clear to the Tribunal and would no doubt would be similarly confusing to the Respondent. They were faced with a leaseholder who perceived an injustice and they did not respond appropriately; they did not make it clear the basis of their actions and clearly set out a suggested course of action that would best protect his interests.
17. Thirdly the Tribunal is very concerned by Mr Reynold's evidence that there was no inspection of the Respondent's windows. This is particularly problematic in the light of the Applicant's aims to improve both the security of the windows and the thermal insulation. It is difficult for the Tribunal to understand how the Applicant could be sure that uninspected windows met their desired outcomes.

The reasonableness of the costs of the insulation works

18. The Respondent's argument in essence is that the cost of the work of nearly £70,000 which installed exterior installation to the block was excessive. This meant that the work for each flat was just under £6,000. In response to a question from the Tribunal the Respondent suggested that the work had had nominal impact upon his fuel bills but he did notice a negligible difference.
19. Mr Reynold's evidence concerning the need for works to the pebble dashing and the cracking to the exterior without a written report was in the Tribunal's view most unsatisfactory. It appears to the Tribunal that the underlying reason behind the additional insulation is the Government funded 'warm homes' initiative which is intended to benefit tenants. The cost of such works to long leaseholders is not cost effective in terms of savings.
20. However the wide terms of the lease clearly enable the Applicant to carry out such work with no regard to their cost effectiveness. If this block was privately owned the Tribunal consider it most unlikely that such work would be carried out under the current legislation.

21. In respect of both the windows and the insulation work the Tribunal is satisfied that the tender process was properly carried out.

The reasonableness of the management costs.

22. The Respondent argued that consultancy fees charged by the Applicant were excessive. Fees of £2157.46 per flat appears to the Tribunal to be high having regard to the size of the contract which was around half a million pounds. However Mr Lamb explained that the consultancy fees had themselves been tested by tender and provided a breakdown between the different specialisms involved which amounted to 12% plus the clerk for the works on an hourly basis resulting in an overall fee of 15%.**The Tribunal therefore determines that the consultancy fees whilst high are within a band of reasonableness having regard to the evidence before it.**

23. The Housing Service Administration costs were originally £538.04p. This had been reduced to £269.02p following complaints from the Respondent (as a gesture of good will). The parties agreed that this was no longer an issue.

The fees for the hearing

24. The Tribunal, having heard arguments from both parties, considered whether the Respondent should reimburse the Applicant with the whole or part of the fees paid in these proceedings. Notwithstanding that the Applicant has won all points the Tribunal are reluctant to come to the conclusion that the Respondent should reimburse the fees in this case. The Tribunal reached this conclusion having regard to the fact that the four long leaseholders had all had to replace their windows in advance, that the Respondent's letters were confusing, and that they had not taken the trouble that the tribunal considers necessary to explain the lease properly to a layman. Mr Godfrey was clearly willing to negotiate and wanted to resolve this issue and indeed had offered £8,000 to do so. In all these circumstances the Tribunal feels it would be unjust and inequitable to ask him reimburse the fees. The Tribunal therefore determines that the Respondent does not have to reimburse any of the fees of the hearing.
25. Counsel, having consulted with the Applicant, assured the Tribunal that the Applicant would not seek to include the costs of these proceedings in a furture service charge.

Helen Carr