IN THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTIONS 18 & 19
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

CASE NO	CHI/00ML/OCE/2007/0051
APPLICANT	50 Vere Road RTM Company Ltd
RESPONDENT	Sevenbuild Ltd (rep by Coole & Haddock, Solicitors)
PROPERTY	50 Vere Road, Brighton
TRIBUNAL MEMBERS	Ms H Clarke (Chair) (Barrister) Mr A O Mackay FRICS Mr N Robinson FRICS
DATE OF HEARING	17 December 2007
DATE OF DECISION	20 December 2007

1. **THE APPLICATION**
   The Applicant exercised the right to enfranchise. The parties agreed the freehold valuation but there remained unpaid service charges which were disputed. The Applicant issued an application under s24 of the Leasehold Reform Housing & Urban Development Act 1993 on the basis that payment of the outstanding service charges comprised a term of the acquisition which was in dispute. The Tribunal was therefore asked to determine whether certain items demanded as service charges for the financial years ending 28 September 2006 and 28 September 2007 were reasonable and/or payable under the jurisdiction provided by ss 18, 19 and 27A Landlord & Tenant Act 1985.

2. The Applicant also sought an order under s20C Landlord & Tenant Act 1985 that the Respondent's legal costs of the application should not be relevant costs for service charge purposes.

3. **THE DECISION**
   For the year ending 28 September 2006;
   The Tribunal determined that all the items challenged were reasonably incurred and payable.

4. For the year ending 28 September 2007;
   The Tribunal disallowed item 3 (£352.50) and made adjustments to items 5 and 7. Under item 5 the Tribunal disallowed the sum of £30

in respect of '3 fire signs'. Under item 7 the Tribunal disallowed the sum of £58.50 plus VAT in respect of telephone calls/letters in. The total amount to be deducted from the demand for the year as a result of the Tribunal's decision was therefore £451.24.

5. **THE ITEMS IN DISPUTE**

Certain items were conceded by the parties after the Application was made, and a credit of £260.75 had been applied to the service charge account as a result of an earlier overpayment. Both parties agreed that the Tribunal need not determine the demands for interim service charge as the year-end accounts had replaced them.

6. The following were therefore the items which remained in dispute and for determination:
For the year ending 28 September 2006;

Item 1	485.75	Grayland Construction
Item 2	94.00	Smart Construction Ltd
Item 3	293.75	Smart Construction Ltd
Item 4	308.44	Radley Associates
Item 5	211.50	Tersus

For the year ending 28 September 2007:

Item 1	264.38	Radley Associates
Item 2	282.00	Radley Associates
Item 3	352.50	Radley Associates
Item 4	270.25	Sovereign Alarms

Item 5	88.00	Astenlane Ltd
Item 6	30.00	SBJ Homes
Item 7	641.55	Coole & Haddock

The Applicant also objected that the Respondent had not disclosed 5 years' worth of bank statements, and contended that extra costs and bank charges had been incurred by delay and financial mismanagement.

7. **THE LAW**

The Landlord & Tenant Act 1985 states at s19:

"(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination—

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

(b) *whether services or works for which costs were incurred are of a reasonable standard..."*

and at s27A:

"(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(c) the person by whom it is payable,

(d) the person to whom it is payable,

(e) the amount which is payable,

(f) the date at or by which it is payable, and

(g) *the manner in which it is payable"*

8. **THE LEASE**

The relevant parts of the Lease shown to the Tribunal made provision for the payment of an interim service charge twice-yearly in such amount as the Landlord may specify to be a "fair and reasonable interim payment on account" plus a balancing payment for any shortfall or excess to be made as soon as possible after the end of the Accounting period on 28 September. There was also provision for further interim payment in the event of major expenditure. The service charge was to be calculated as a proportion of the costs incurred by the Landlord in complying with his obligations under the Lease. These included an obligation to carry out works which may be required to comply with any statutory notices or provisions. The Tenant was also obliged to contribute to the Landlord's "legal fees in connection with the management of the building".

9. **THE HEARING**
The hearing initially took place on 7 November but was adjourned and further directions were made.

10. The adjourned hearing was attended by Ms E Dale who made submissions on behalf of the Applicant, of which she is company secretary. She was accompanied by Mr D Pickles, who assisted Ms Dale. Mr M Scruton, the tenant of the Top Flat, also attended but made no representations. The Respondent was represented by Mr J Everett of Coole & Haddock, solicitors. Written representations were received from both parties.

11. **THE INSPECTION**
The Tribunal inspected the common parts of the property immediately prior to the initial hearing on 7 November. The property comprised a three-storey end-terraced building in mid-Brighton converted into three flats and appeared to be in generally reasonable condition. The Tribunal noted that the entrance hallway inside the building occupied an area of about 25 square feet. This was the extent of the common parts used by the tenants and gave access to 2 flats. The Lower Ground Floor flat had its own entrance at basement level.

12. **SUBMISSIONS AND DELIBERATION**
For the year ending 28 September 2006:
Items 1 -5:
The Applicant's case was that by a letter dated 6 October 2005 solicitors acting for the purchaser of one of the flats enquired whether the Landlord's agents expected there to be any service charge excess or major expenditure. The reply dated 27 October 2005 stated that "we do not anticipate an excess but we cannot be sure". The Applicant said this was misleading, and that each of the challenged items was known to the agents. The budget and interim service charge demands should have been drawn up based on expected outgoings, in accordance with the RICS Code. The purchase of the two flats affected went ahead. The assignees had not been warned about the challenged items, which were demanded as part of the excess at the year's end, and so they should not have to pay them. The Applicant was not willing to agree that the work invoiced under item 5 (an asbestos inspection) had taken place.

13. The Respondent replied that the letter came only a month after the start of the service charge year. The invoice for item 5 stated that the inspection took place on 12 December 2005, so the cost had not been incurred and may not have been known to the agents as at 27

October. Items 2 & 4 related to damp which was referred to in the 27 October letter in any event. There was no provision of the Lease or the law which made it a requirement that tenants had to be warned about these items of expenditure before they were incurred. The landlord could decide what was a fair and reasonable interim payment, in accordance with the Lease, and had done so by constructing a budget. In any event the letter was equivocal, and did not assert that there were no charges.

14. On the balance of probability the Tribunal found that the evidence showed that the work had been done. There was no evidence whatsoever to the contrary, and no reason to believe that the contractors had falsified their invoices. There was no challenge to the amount of any of these items, and they were all plainly relevant costs under the Lease. The Tribunal examined the relevant clause of the Lease and decided that there was no obligation on the Landlord to vary the initial budget and projected interim demands so as to incorporate expenditure over the year. The purpose of the balancing item under the Lease was exactly that. The letter dated 27 October 2005 was not misleading, as it did not make any inaccurate assertions. The Tribunal noted that the Applicant's description of the content of the letter in its statement of case did not correspond to the wording on the face of the letter.

15. The Tribunal noted that the application had been made under the enfranchisement legislation in order to determine the amount of service charges due to the freeholder as part of the terms of acquisition. As such, it fell outside the jurisdiction of this Tribunal to make any determination as to whether the present tenants were owed any indemnity by the former tenants or any person involved in the purchase. The Tribunal directed itself that the law provides that the burden of covenants passes with the land. As between landlord and the tenant at any time, the liability to pay for these items lay with the tenant of the flat. Where the identity of the tenant had changed (because a flat was sold) then the law generally provided that the assignee (the new tenant) became liable for payments of service charge from the date of the assignment, subject to the terms of the contract. If there was any dispute as between the former and the new tenant, such a dispute was not part of the application before the Tribunal. In the circumstances, the sums claimed were payable by the tenants.

16. **Item 1 (additional points)**
This was a retention from works carried out in 2005. The Applicant said it should have appeared in the service charge demand for the year ending September 2005, even though the invoice was dated 19 December 2005. There was a precedent for this because the accountant's fees were charged in the year before the one in which they were actually invoiced.

17. The Respondent said the costs were incurred in the 2005-2006 year and were correctly demanded in that year. The agents would have been criticised if they had paid an invoice before it was raised.

18. The Tribunal observed that the invoice for Item 1 was passed to the managing agents under cover of a letter dated 17 May 2006 and was not signed off by the surveyor until that date. This added further weight to the Respondent's submissions, and demonstrated why the charges of a contractor on major works were not comparable with the annual fees of the accountant. The Tribunal found on the evidence that the item was incurred and correctly charged in the 2005-2006 year.

For the year ending 28 September 2007:

19. **Item 1:**
Invoice for annual inspection & report by surveyor.
The Applicant doubted the inspection had taken place and pointed to several comments in the report which were said to be inaccurate. Overall the report said nothing that the lessees did not already know. It was dated 15-11-06 but in a letter dated 25 October 2006 the Respondent said "the only inspection we have authorised is for a commonway inspection for Fire Regulations". The Applicant contended that the Lease required that the lessees should be notified of an inspection. She agreed that the clause she relied on was concerned with access to the interior of the flats, but said it applied because a thorough job could not be done without gaining access to the flats or to the rear.

20. The Respondent's representative was unable to deal specifically with the letter dated 25 October 2006 but contended that it was good management practice to have a regular inspection.

21. The Tribunal found on the balance of probability that the evidence showed the work had been done. There was no evidence whatsoever to the contrary, and no reason to believe that the surveyor had falsified the invoice. The report dealt adequately with all areas of the property and in the expert view of the Tribunal it was suitable for its purpose and it was reasonable to incur the cost, which was a reasonable amount for the work provided. In the experience of the Tribunal an annual inspection would sometimes be carried out by the managing agents themselves, but here the expertise of the agents appeared to lie in management and they were not surveyors themselves.

22. **Items 2, 3, 4, 5 and 6:**
Inspection of the roof space and preparation of a report.
Plan of common parts

Fire Risk Assessment report
Fire extinguisher & signs
Signs & smoke alarm
These items were all connected with fire safety at the property.

23. The Applicant agreed that the Regulatory Reform (Fire Safety) Order 2005 was applicable, but asserted that its provisions could have been satisfied by the lessees themselves purchasing and fitting a smoke alarm. The local Fire Officer would carry out a risk assessment free of charge. The advice which the Applicant had received from the Fire Officer indicated that a fire extinguisher was inappropriate. The plan of common parts was unnecessary. The Applicant doubted the roof space inspection had taken place as it was undated and the Applicants were not advised when it took place. The works recommended were works to the party wall, which had been repaired in the previous 5 years. The roof space anyway did not comprise common parts so should not have been included in fire safety works to common parts. In any event the sums expended exceeded £250 per flat and the lessees should have been consulted.

24. The Respondent stated that the roof space inspection had taken place as a result of the Fire Risk Assessment carried out by Sovereign Alarms (item 4). This was commissioned by the managing agents to comply with the requirements of the Fire Safety Order 2005. Sovereign Alarms had specifically recommended inspection of the roof space (item 2), provision of a fire extinguisher and cupboard signs (items 5 & 6). The plan of common parts was to assist with identifying the location of gas and electricity services. It was entirely reasonable and appropriate to employ a specialist to advise on these issues and follow its recommendations. The Tribunal put it to the parties for comment that experience showed that the Fire Officer would not advise professional managing agents, even if advice was available for private occupiers.

25. The Tribunal adopted the reasoning set out in Forcelux Ltd v Sweetman [2001] 2 EGLR 173 and cited by the Respondent;
"section 19(2A) of the 1985 Act was not concerned with whether the costs were "reasonable", but whether they were "reasonably incurred". The question was not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred. In answering that question, two distinct matters have to be considered. First, the evidence, and, from that, whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the leases, the RICS code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence."

26. The Tribunal considered that the evidence did not explain why Astenlane fitted 3 signs in addition to the fire extinguisher sign. Given the size of the communal hallway it was difficult to see their purpose. The sum of £30 was not reasonably incurred. However, each of the other items was recommended by Sovereign. It was reasonable for the landlord, through its managing agents, to seek specialist advice about the fire risks affecting the building and to follow that advice once obtained. The Tribunal considered that the Applicant's contention that the roof space did not need to be considered was misconceived; the Lease includes the roof timbers in the areas for which the landlord retains an obligation.

27. The Tribunal accepted the Applicant's submission that the charge by Stuart Radley for drawing up a plan of the common parts (item 3) was not reasonably incurred. The area was too small to warrant a plan. If a plan was required, which was debatable, it could have been commissioned from Sovereign under their inspection fee.

28. The total amount for the fire safety works therefore did not exceed £750 and the statutory obligation to consult did not arise.

29. **Item 7**
Legal costs
After adjustments had been made to reflect concessions by the parties, the amount said to be chargeable to the service charge account was £641.55. This represented work done between February - August 2007 by the solicitors to the Respondent.

30. The Applicant said that the charges should not be paid because the accounts had generally been badly managed and discrepancies had emerged only after the lessees asked for documents to be shown to them. Their requests had not been met swiftly so extra time and costs were wasted.

31. The Respondent said that the Lease permitted legal costs to be recovered. This was not disputed by the Applicant. The 'discrepancies' relied on by the Applicant related to the accounts ending 2007 so these documents would not in any event have been assembled and scrutinised until after September 2007. The Respondent had intended to issue an application of its own because the lessees had not paid the interim service charges. No service charges had been paid since 2006. In Iperion Investments Corporation v Broadwalk House Residents Ltd [1995] 2 EGLR 47 it was made clear that the costs even of unsuccessful litigation could properly be recovered under the service charge, so long as the lease permitted it.

32. The Tribunal noted that the original application had been based on the accounts to end 2006, and interim charges for the 2007 year end,

none of which had been paid, and since issue of the application the interim charges had been displaced by the actual figures. The Applicant itself was represented by solicitors through February - August 2007, was seeking enfranchisement, and it would not have been reasonable to demand that the managing agents should refrain from instructing solicitors themselves against that background. There was no evidence that any of the costs had been inflated due to non-disclosure of documents. The Tribunal considered that costs on the solicitor's bill for telephone calls and letters in would not be allowed on an assessment of costs in court and there was no reason why a different approach should apply here. The Tribunal accordingly disallowed 3 units at £19.50 each plus VAT from the bill.

33. **Disclosure of bank statements & other documents**
The Tribunal determined that disputes about the production of documents lay outside its jurisdiction. It was required to make a determination as to the amount of service charges payable as a term of the acquisition, and the Applicant could not bring within the scope of that question its wider concerns about the history of the bank accounts. The Tribunal noted in any event that the Applicant had not made any specific allegation that wrongful transactions had taken place but simply entertained a general concern about the accounts.

34. **Bank charges and costs**
The Applicant contended that discrepancies had been identified in the management of the service charge account which had led to additional bank charges or interest being incurred. A total amount of £1065.29 had been conceded by the Respondent to have been debited to the account during 2007 in error. The Respondent replied that the financial year had only just ended when the Applicant brought the dispute before the Tribunal. The accountant had explained how an overpayment of £260.75 was made to Grayland Construction by oversight. Adjustments had been made to reflect the conceded points. However the lessees had paid none of the service charges in question, interim or final.

35. The Tribunal found that no evidence had been shown which demonstrated how the bank charges or interest would have been affected by the points raised by the Applicant. The accounts for 2007 showed an interest credit of £6.42 despite the absence of payment.

36. **Accounting procedures**
The Applicant identified a number of ways in which it said that the interim service charge demands and the accounts fell short of the provisions of the RICS Residential Management Code. It also relied on the items which had been wrongly debited to contend that the accountant's fees should not be allowed. The Tribunal noted that the accountant's fee of £240 plus VAT was incurred for "acting upon

your instructions in the preparation of the maintenance account". This work had been done. The RICS Code is an illustration of good practice and no significant prejudice could be shown to have been suffered. The accountant's fee was payable in full.

37. **Section 20C Costs**
The Applicants sought an order that the costs of the Respondent incurred in connection with the tribunal proceedings are not to be regarded as relevant costs to be taken into account in determining the service charge.

38. The Tribunal refused to make such an order. The issues for determination had only become clear after an adjournment to allow the Applicant to have determined issues arising in the 2007 accounts, which had not formed part of the original application. The Applicant's case had succeeded only to the extent of disallowing £451.24 from a total disputed of £3322.12. There was no indication that the Respondent had prolonged the matter. Both parties had submitted fully revised statements of case and skeleton arguments, and there was duplication of documents on both sides.

Signed---------- (Chair)

Dated ----------

IN THE LEASEHOLD VALUATION TRIBUNAL
IN THE MATTER OF A REQUEST FOR PERMISSION TO APPEAL

Case No	CHI/00ML/OCE/2007/0051
Applicant	50 Vere Road RTM Company Ltd
Respondent	Sevenbuild Ltd (rep by Coole & Haddock, Solicitors)
Property	50 Vere Road, Brighton
Tribunal Members	Ms H Clarke (Chair) (Barrister) Mr A O Mackay FRICS Mr N Robinson FRICS
Date of Hearing	17 December 2007
Date of original Decision	20 December 2007
Date of Applicant's Letter	12 January 2008
Date of Tribunal's Decision on permission	20 May 2008

1. On 20 December 2007 the Leasehold Valuation Tribunal made a determination upon the Applicant's applications under the Leasehold Reform Housing & Urban Development Act 1993 in connection with service charges and costs. By a letter dated 12 January 2008 the Applicant expressed dissatisfaction with the Tribunal's handling of its case and raised a number of points of contention.

2. The issues now for the Tribunal to determine are i) whether the said letter (read in conjunction with subsequent correspondence) comprised or should be treated as a request for permission to appeal, and if so, then ii) whether such permission should be given by the Tribunal.

3. **DECISION**
i) The letter of 12 January 2008 should be treated as a request for permission to appeal.
ii) The Tribunal refuses permission to appeal.

4. **REASONS**

The reasons why the Tribunal takes the view that the letter did constitute a request for permission to appeal are as follows. The letter stated that the Applicant wished to complain. Although the Applicant was specifically asked by the Tribunal office to confirm whether it wished the letter to be treated as an appeal, in reply to which it stated that it could not afford to do so, the content of the 'complaints' clearly pertain to case management and decision making functions of the Tribunal. The Applicant continued to maintain that its complaints were not concerned with judicial matters, but the Tribunal considers that the Applicant had misconceived the scope of the judicial functions of the Tribunal. The Tribunal also notes that the Applicant subsequently by letter dated 12 March 2008 asked for clarification as to where it stood as regards appeal.

5. **REASONS FOR REFUSING PERMISSION**

The Tribunal considers that no substantial procedural defect occurred, and no error of law is disclosed by the Applicant's grounds of appeal.

6. The Tribunal adopts the numbering in the Applicant's letter:
Points 1, 2, 3, 4, 5, 6: The Tribunal made a case-management decision on these matters, taking into account the submissions made by each party and the possibility that either party might be prejudiced by its decision, and decided to proceed with the (adjourned) hearing and determine the matters in issue.

7. Point 7: i) The Respondent's solicitor told the Tribunal that all the documents in the bundle other than the revised statement of case had been sent to the Applicant in November 2007.

ii) The Tribunal's determination under s20C (paragraph 38 of the Decision) refers to the extent to which both parties had contributed to the large quantities of documentation in the case, and did not refer to or rely on the contents of any document filed late.

iii) The extracts quoted in the determination are extracts from statutory or case-law.

8. Point 8: No error of law or procedural defect is disclosed.

9. Point 9: The Tribunal has no knowledge of this allegation. No such allegation was made either to the Tribunal or the case manager at the time of hearing or at any time prior to the letter of complaint.

10. Point 10: The Tribunal is at a loss to understand this allegation, as there appears to be no arithmetical error in the determination.

11. Point 11 a: The Tribunal is unable to respond to this allegation as no particulars have been provided.

12. Point 11 b: No error of law or procedural defect is disclosed.

13. Further points i) and ii): The Tribunal did not consider, on the information before it, that the Applicants had been surprised by any evidence because it was told that the Applicants had received the documents in the bundle some months previously.

14. Further point iii): The Applicant's case was not clear before the hearing, and it transpired only in the course of the hearing that it contended that former lessees should be liable to pay some of the charges. Neither former nor present lessees were parties to the application, and former lessees had not been given notice of it. The Tribunal determined the issues between the parties which were before it.

15. Further point iv): The Tribunal is at a loss to understand this allegation as the Tribunal's decision under s20C concerned the costs of 'the proceedings', which dealt with accounts for years ending both 2006 and 2007.

Signed----------

Ms H Clarke Chair on behalf of the Tribunal

Dated 20th May 2008