

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

Case No: CHI/OOMS/LSC/2008/0064

BETWEEN:

PEVEREL LIMITED

Applicant

- and -

**LEASEHOLDERS OF 24 QUEENS TERRACE
25 LATIMER STREET AND 48/49 OXFORD STREET, SOUTHAMPTON**

Respondents

PREMISES: 24 Queens Terrace, 25 Latimer Street
and 48/49 Oxford Street, Southampton ("the Premises")

HEARING: 29th September 2008
TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR P D TURNER-POWELL FRICS

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

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines that the cost of the works proposed to be carried out by the Applicant as set out in its schedule of works for Phase II – External repairs for the Premises, as amended, at the estimated price of £51,455 (i.e. £52,355 plus VAT less £900 plus VAT for the flat roof repair over the commercial premises) together with supervising surveyor's fees of £5,000 plus VAT and managing agents' fees of £1,282.70 plus VAT will, if carried out, have been reasonably incurred and that the price would be a reasonable price for the works proposed.

REASONS

1. Background

- 1.1 On 3rd July 2008 the Applicant applied to the Tribunal for a determination under Section 27A of the Landlord & Tenant Act 1985 as to the reasonableness of incurring costs for certain major works proposed to be carried out to the Premises in the current service charge year. Those works are set out in a Schedule of Work for Phase II – External Repairs prepared by Philip Sealey Chartered surveyors for the Applicant's managing agents, DMA Chartered Surveyors, in February 2007. It is proposed to carry out all the work contained in the schedule with the exception of an area of flat roof over the ground floor commercial unit which is the responsibility of the commercial tenant.
- 1.2 Estimates were sought and obtained from three contractors. Jorgensens at £52,355 plus VAT provided the lowest quotation.
- 1.3 The Applicant has complied with the consultation requirements of Section 20 of the Landlord & Tenant Act 1985.

2. The Premises

- 2.1 The Premises comprise a Grade II listed building being a conversion of a former shipping office constructed in the mid 1800's. It has three storeys and a basement. There is a restaurant on the ground floor with 13 residential flats above.
- 2.2 It is evident from an external inspection that the rendering to the brickwork, particularly to the Latimer Street elevation towards the Queens Terrace end is in need of repair and the render requires to be painted. There is vegetation growing in the guttering and the rainwater goods are in need of being replaced.
- 2.3 A sample of the paintwork to the render has been analysed by the Lime Centre in Winchester who have found that in the past the render has been painted with a modern flexible paint and not a lime wash as should have been the case.

3. The Leases

- 3.1 Under the residential leases the landlord has the responsibility to maintain and keep in good substantial repair and condition inter alia the structure of the property and the rainwater pipes of the Premises.
- 3.2 Under Clause 4 (4) of the said leases the lessee is required to pay by way of further or additional rent the interim charge and the service charge as provided by the Fourth Schedule to the lease.
- 3.3 The Fourth Schedule sets out what is covered by the service charge and interim charge which includes the expenditure incurred by the landlord under Clause 5 (4) of the lease on repairs to the structure, gutters and rainwater pipes referred to at paragraph 3.1 above.

4. The law

- 4.1 Section 27A (3) of the Landlord & Tenant Act 1985 ("the 1985 Act") provides that:-
The Leasehold Valuation Tribunal may determine whether if costs were incurred for, inter alia, repairs maintenance or improvements a service charge would be payable and, if it would, determine:
- (a) the person by whom it would be payable
 - (b) the person to whom it would be payable
 - (c) the amount which would be payable
 - (d) the date at or by which it would be payable
 - (e) the manner in which it would be payable.
- 4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are or are to be reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. Where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is so payable.

5. The evidence

5.1 The Tribunal had the benefit of a witness statement by Mr Hillsdon of DMA, who also gave oral evidence to the Tribunal as did Mr Sealey and Mr John Nouch who is a Property Manager with DMA.

5.2 This evidence identified the works needed to be carried out for the landlord to comply with its covenants in the leases as set out in the Schedule of Works produced by Mr Sealey in 2007. Works to the flat roof over the commercial premises would not be carried out as this was the responsibility of the leasehold owner of the commercial premises.

5.3 The works had been put out to tender. Jorgensens provided the cheapest quote. DMA had ascertained that the price quoted would be held by Jorgensens for two months.

5.4 The managing agents accordingly sought a declaration from the Tribunal as to the reasonableness of carrying out the works at the quoted price.

5.5 Two lessees were represented at the hearing, Mrs Rummey on behalf of her son who is the leaseholder of Flat 210 Latimer Street, and Mr Taylor of Flat 101. Mrs Rummey accepted that the work needed to be done but her concerns were as follows:-

a) that the managing agents had allowed the building to fall into a bad state of repair and notwithstanding that some works had been carried out in 2002 that work had failed to rectify the problem of water ingress into the building.

b) she wanted a firm quote rather than one which depended upon what was found once the work started. She wanted a guarantee for the work which is to be done. She had asked the managing agents for assurances on these matters on a number of occasions: only now, just before the Tribunal hearing, had some answers been provided. She had no confidence in the managing agents that they would get a good job done for the money that was being required of the lessees.

c) she was concerned that the intention was to use other than a lime wash to paint the exterior. She felt that only a lime wash should be used.

d) Mr Taylor was concerned that he was being asked to pay a lot of money and he had no confidence that the proposed works would resolve the problem with the building and that it

would not be long before he would be asked for another large sum for similar work to be carried out.

5.6 The response to those concerns, given by the representatives from DMA and Mr Sealey were as follows:-

a) It is correct that the works done to the roof previously had not totally cured the ingress of water. This is a notoriously difficult problem because it is not easy to determine exactly where water is entering a building. He was hopeful, however, that the work that was going to be done to repair the cracks in the render and the coping stones would cure the problem of penetrating damp.

b) It is correct that the render and cornice has not been inspected at close quarters. This would have required scaffolding to be erected. Mr Sealey did not think that the Council would agree to the road being closed off to allow a "cherry-picker" to be used. Scaffolding would be very expensive and it may prove to have been an unnecessary expense once the works start. The lessees' protection is that if it is found that additional work is required once the proposed works have started, the Applicant will need to revert to the Tribunal under an emergency application under Section 20ZA of the Landlord & Tenant Act 1985 for the Tribunal to determine whether it is reasonable to incur the further expense of any additional work said to be found to be necessary in this way.

c) Jorgensens guarantee the work they carry out but they cannot guarantee that the work done will necessarily cure the problems with the building. References for Jorgensens had recently been produced to Mrs Rummey. Mr Sealey would sign the work off in order to authorise stage payments. He would only do this if satisfied that work to the stated value had been completed. The contributions towards the cost of the works need to be paid to the managing agents in advance so that they know they have the funds necessary to pay for the work but this will not be paid over to the contractor until Mr Sealey has certified that work to the value of that payment has been incurred. Even then there is a retention to cover contingencies. Mr Sealey would be keeping the City Council officers informed as to what works are being carried out.

d) With regard to the type of paint which will be used, an analysis of the render had recently been carried out by the Lime Centre in Winchester. This revealed that, unfortunately, in the past the render had been painted with a modern flexible paint and not lime wash. Whilst Mr Sealey agreed that ideally lime wash should be used, it would now be prohibitively expensive to remove the existing paint completely before applying lime wash. It would be necessary to remove the existing paint because lime wash would not adhere to or be absorbed into the existing modern paint. Consequently it would be necessary to use a modern masonry paint. In any event, lime wash would require more frequent applications in the future, making the cost of maintaining the render higher, the most expensive element being the cost of erecting scaffolding every time the building requires to be painted.

6. Determination

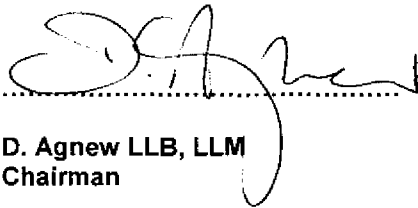
- 6.1 The Tribunal had no hesitation in determining that if the work set out in the Schedule of Works referred to above (save for the flat roof over the commercial premises) is carried out then it will have been reasonably incurred: indeed the lessees did not dispute this.
- 6.2 The Tribunal noted the lessees' concerns. It was satisfied, however, that the managing agents had chosen a reputable firm to carry out the work. The price was reasonable, being the lowest of the three estimates obtained. The works would be supervised by Mr Sealey. If it should turn out that the work is not carried out to a reasonable standard then it will be open to the lessees to make a fresh application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a determination as to what would be a reasonable price for them to pay in those circumstances. It is to be hoped, however, that this will not prove to be necessary.
- 6.3 Whilst it would have been preferable in an ideal world for Mr Sealey to have had the opportunity of examining the whole of the building at close quarters to enable him to have been in a position to know how much of the render needed to be treated, the Tribunal accepts that it is always a judgment-call for the managing agents to make as to whether

they incur the cost of erecting scaffolding to enable that process to be carried out or to leave it until the scaffolding is erected for the start of the works. It was not unreasonable for DMA/Mr Sealey to have chosen the latter course of action.

6.4 Again, in an ideal world, lime wash should be used on this building but in the past modern plastic paint has been applied and lime wash cannot now be used without the old paint being completely stripped off at enormous expense. It is therefore not unreasonable for Mr Sealey to recommend that a modern masonry paint be used on this occasion.

6.5 The Tribunal would therefore make the determination sought by the Applicant.

Dated this 29th day of September 2008



A handwritten signature in black ink, appearing to read 'D. Agnew', is written over a horizontal dotted line. The signature is fluid and cursive.

**D. Agnew LLB, LLM
Chairman**