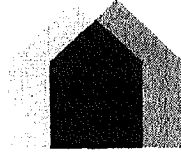


5347



**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LANDLORD AND TENANT ACT 1985, SECTIONS 27A

REF: LON/00AQ/LDC/2010/0015

PROPERTY: FLATS 1-14, MAISON ALFORT, 251 HIGH STREET,
HARROW WEALD, HA3 5EL

Applicant: BUTTERCUP BUILDING LIMITED (through its agents Cheal
Asset Management Limited trading as KLPA & Company)

Respondent THE LEASEHOLDERS OF THE 14 FLATS AT THE
PROPERTY, AS LISTED IN THE SCHEDULE ATTACHED TO
THE APPLICATION

Appearances MR D. GILES (of Counsel)
MR K. ANAND
MR P. ANAND

For the Applicant

MR HITESH SHAH (KSEYE Property Services)
MR PINTU PATEL (Flat 14)
MR KATUGAMPOLA (Flat 10)

For the Respondents

Date of Application: 3rd February 2010

Date of Pre-Trial Review and Directions: 3rd March 2010

Date of Hearing 27th July 2010, 10 & 11th November 2010

Date Reconvene by Tribunal: 23rd November 2010

Date of Decision: 17th December 2010.

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr P. Roberts Dip Arch RIBA
Mrs R. Turner BA (Hons) JP

DECISION

Introduction

1. This case involves an application made by Buttercup Building Limited, through its managing agent KLPA & Company (“the Applicant”). The application is made pursuant to Section 27A of the Landlord & Tenant Act 1985 (“the Act”) and is in respect of Flats 1-14, Maison Alfort, 251 High Street, Harrow Weald, HA3 5EL (“the Property”). The application is made against the leaseholders of the 14 separate flats comprising the property, and these leaseholders are identified in a schedule attached to the application. The leaseholders will be referred to as (“the Respondents”) in the context of this decision. There was in fact an additional application made under Section 20ZA of the Act on the same date, but by directions given at the pre-trial review which occurred on 3 March 2010, it was determined that the purpose for which that application was issued (that is to say to seek an order to release the landlord from its obligation to insure the property) was misconceived; no directions were given in relation to that application and the application was not pursued before this Tribunal. This decision therefore relates to the Section 27A application only.
2. This matter first came before the Tribunal on 27 July 2010 when unfortunately the matter had to be adjourned for reasons set out in some further directions given on that occasion, and which will not be expanded upon herein. Suffice it to say that it was some while before it was possible to relist the application for the convenience of all parties and the Tribunal, and it was not until the 10 November 2010 that the matter came back before the Tribunal. It was however possible to carry out an inspection on 27 July 2010.

The Inspection

3. The Tribunal inspected the property on the morning of 27th July in the presence of Mr K and Mr P Anand and the leaseholders of flat nos.7, 10, 14 and Mr. Jadva

representing Mr P Patel of flat no.13. This utilitarian 1970's four storey block of brick elevations under a flat roof incorporated covered parking under a terraced area to the rear. Original windows of timber, some of which showed severe rot and others had been replaced in uPVC by leaseholders.

The block is on a corner plot of sparsely lawned area; a manhole cover was cracked as was paving; a gas meter enclosure had doors missing. There was very damp and muddy ground adjacent to a manhole to the front area; weeds were evident as was dog fouling.

The main entrance door lacked an entryphone system (it having been removed after vandalism); the common parts were sparse and floored generally with rubber studded sheet, stairs had aluminium nosings some of which were insecure, the top floor landing was covered with a cheap laminate flooring.

Entrance lobbies to flat entrances were of glazing set into a timber framed screen; there was evidence of some damage to the framing and locks due to attempts at forced entry.

At 2nd floor level windows were crudely screwed shut and a damp wall area adjacent to flat no.7 entrance had been boarded over; damp wall areas were also noted within flat no.7 itself.

Access to the main roof was obtained; a number of mobile telephone network aerials were erected on the corners of the block with associated equipment; the felted roof covering showed signs of numerous repairs, carried out to a poor standard and were incomplete.

Overall the block appeared neglected and uncared for. Those repairs that had been carried out were of a basic standard.

Background

4. In the directions given on 3 March 2010, the property was described as "... a block with a troubled history". Having attended at the inspection, heard some submissions on 27 July, and two further days of extensive evidence on 10 and 11 November 2010, this Tribunal is satisfied that that description was in no way an over-statement. The ill-feeling between the Applicant and the Respondents generally in this case runs deep, and the appointment of two managers, the first on 6 July 2001 and the second on 20 May 2002, has not assisted in improving

relations. The second of the two managers applied to be discharged and was so discharged around May 2004.

5. The essence of the dispute is that the Applicant contends that over a long period of time, the Respondents have failed or refused to pay their service charges as a result of which the property has fallen into disrepair, - or its maintenance has had to be funded by the Applicant itself. The Respondents contend that when they have paid service charges, services have either not been supplied, or that those supplied were of poor quality, and that they have accordingly withheld payment of service charges, given the alleged poor performance and over charges on the part of the Applicant. It was the Applicant who brought this application before the Tribunal to have determinations made in respect of the reasonableness of the charges made for the service charge years for the period 24 June 2001 – 31 December 2009.
6. It is proposed to deal with these service charge years on a year by year basis. The Tribunal will summarise as briefly as possible the evidence on both sides and give its determination in relation to the separate issues raised in each year. These determinations are summarised in the schedule attached to this decision. After discussion and by agreement with all parties at the hearing, it was determined that the accounting situation between the Applicant and the various different Respondents is complicated, and the parties themselves, based on the factual findings made by the Tribunal, will determine whether and if so, how much, remains due on the separate service charge accounts. If there is an argument about this, which it is hoped will not occur, then the parties concerned will have the option of taking appropriate proceedings of a declaratory or enforcement kind, before the County Court.
7. At the hearing Mr Giles of counsel appeared for the Applicant, and the Tribunal heard evidence from Mr K Anand and Mr P Anand. Mr K Anand is an officer and shareholder of the Applicant company. He is also a consultant of KLPA & Company, Estate Management Consultants, who are the Applicant's managing agents. Mr P Anand is Mr K Anand's son. Mr P Anand is a partner in KLPA &

Company Estate Maintenance Department, which appears to be a division of the managing agents, and appears to deal in-house with issues of property maintenance, as will be referred to below. Mr K Anand is or was at an earlier period, the principal of a firm of accountants called Kamlesh K. Anand & Company, which company at an earlier stage dealt with tax and management consultancy issues for the Applicant company.

8. The Respondents were represented by Mr Hitesh Shah of KSEYE Property Services, which is a property consultancy. He told the Tribunal that he had no interest in any of the flats at the property, and that he was acting as a friend of two of the leaseholders and to assist the leaseholders. Although having no legal qualifications, Mr Shah represented the Respondents with some considerable competence, and the Tribunal was assisted by him.

Service charge year ending 23 June 2002

9. Mr K Anand had prepared for the Tribunal five main bundles of documents and certain other documents running to nearly 2,000 pages. At page 109 in the first hearing bundle there is a spread sheet setting out a summary of the total annual expenditure for service charges for each of the service charge years in issue, together with a calculation of the one fourteenth share for each leaseholder.
10. Although there was initially some dispute about this first service charge year, ultimately Mr Shah, on behalf of the Respondents he represented, accepted that there was no dispute in respect of this year and that this period was covered by the management of the first of the Tribunal appointed managers, namely a Mr Ayling. It should be noted that although Mr Shah has been referred to as representing the Respondents, Flats 4, 5, 6 and 12 are owned either by Mr Anand or companies of which he is the owner. Obviously Mr Shah does not appear for those owners. Equally, Flat 1 is owned by a company called Avon Estates Limited. That company has made no representations to the Tribunal on the Applicant's evidence either orally or in writing, and made no appearance at any of the hearings in respect of this matter. Once again, therefore, Mr Shah does not appear for that leaseholder.

11. On the evidence before the Tribunal and given the concession made by Mr Shah, the figures given at page 109 in the bundle for that service charge year appear to the Tribunal to be reasonable (they total £9,981 or £712.93 per leaseholder) and the Tribunal's finding is that service charges in those sums are reasonable and recoverable. Quite what the mechanics are, so far as the accounting of these sums is concerned, the Tribunal will have to leave the parties to take advice upon respectively, because obviously this was a period covered by a management order of the Tribunal.

Year ending 23 June 2003

The accounts and statement of maintenance expenditure for this year are at page 282 in the bundles. Once again, so far as the Respondents were concerned, this period, covered by the management of the Tribunal appointed manager Mr Horler, was not challenged in the main. The one item which was challenged was a claimed agents' administration, valuation and collection expense in the sum of £525.51 being 15% of the insurance premium for that year, which was £3,503.42. The Respondents contended that this was an unreasonable further expense. The Applicant, through Mr Anand, contended that that year he had placed the insurance personally through KLPA & Company, and it was therefore appropriate that this further fee should be payable. The Tribunal saw the insurance certificate, and it seems plain that the insurance was placed – and in the circumstances there seems no reason why the premium should not be part of the service charge for that year, together with the fee, which is not outside the ordinary range. The charges therefore allowed as reasonable for that year are as set out in the Schedule attached to the Decision, that is to say, the premium of £3503.42 and the fee of £525.51.

Year ending 23 June 2004

12. It was during this year that Mr Horler, the Tribunal appointed Manager, applied to be and was discharged. At some time during the year KLPA & Company took over

the management of the property. In the spreadsheet at page 109, there is a claimed figure of £6,751.79 for the year ending 23 June 2004 and a further £5,218.42 for the 6 month period following that and completing the calendar year at 31 December 2004. So far as the first period is concerned, the Tribunal was shown an internal computerised printout of Douglas Duff, Chartered Surveyors. Mr Horler's firm was BBG Surveyors, but it may be that there was some merger of this firm with Douglas Duff, or some other connection. In any event, the figures contained in that print-out, and summarised by Mr Anand in a note attached to it, appear unexceptional, and there was no specific challenge in relation to these charges, save for some criticism in respect of the entry-phone expenditure. It was said that the entry-phone system never worked but there was no real good evidence on behalf of the Respondents to flesh out this allegation, and the Tribunal was satisfied that the relatively small expenditure referable in this regard (£321) was not unreasonable. The service charge as appearing at page 109 for that year therefore (that is to say the period ending 23 June 2004) is allowed in the sum of £6,751.79.

13. Mr Shah also challenged other charges for that period, on the basis that Mr Anand had not produced the invoices. The Tribunal considered he could not be blamed for that, given that the property was then under the Tribunal manager's supervision. The charges appear unremarkable and are allowed.

14. So far as the further 6 month period taking the charge up until the end of the calendar year is concerned, this appears to be a further £5,218.42. This is particularised at page 370 in the bundle in the accountant's report issued by Chartered Accountants Delson & Co. The only sum really challenged by the Respondents for that period was the managing agents' fee of KLPA & Company in the total sum of £1,190 which computes to £85 per flat. Mr Shah contended on behalf of the Respondents he represents that the Respondents saw no real value for such a charge. Mr Anand pointed out that he had taken over at that point, that he had gone to inspect the property, had tried to listen to the leaseholders' complaints and had placed buildings insurance and done some small repairs (£425 worth). The sum involved in the scheme of things, at the rate of £85 for a half year does not

seem to the Tribunal to be unreasonable and therefore the total figure for that period of £5,218.42 is also allowed in full.

Year ending 31 December 2005

15. The sum claimed for this period is £6,006.17 (or £429.01 per flat). The figures for that year were not challenged on behalf of the Respondents and that sum is allowed in full as being reasonably incurred and reasonable in amount.

Year ending 31 December 2006

16. There were some challenges to the charges for this service charge year. The accounts for the year appear at page 577 in bundle 2. Taking the charges in turn, a sum of £3,754 has been charged for the insurance premium. The Tribunal saw the policy and premium documents for this cover and it is approved. The electricity charge of £322 was not challenged. The sum of £563 was charged by way of agents' fees over and above the ordinary managing agents fees charged later in the accounts. Mr Anand justified this on the basis that that was a year in which he was involved in management significantly in excess of the standard management because there was very substantial water leakage from one of the flats at the property, that is to say Flat 8. The result of this was that major damage was caused to various other flats below, and he was involved in liaising in the obtaining of a surveyor to report and explain how the defect could be detected and rectified, and it was also necessary for him to instruct lawyers to obtain a court order to facilitate access to the flat in question. The Respondents for their part contended, in a generalised way, that the leakage had occurred through poor maintenance on the part of the Applicant. There was no evidence in this regard from the Respondents to support this allegation and Mr Anand's evidence was that in fact the problem existed in some piping below the screeded floor level and could not have been detected through inspection or routine ordinary maintenance. On the balance of the evidence before the Tribunal, the Tribunal accepted this evidence, and the fact that the problems associated by this water leakage had caused damage to the common parts and more than the usual management activity. The sum of £563, being 15% of the insurance premium is allowed as being reasonable.

17. Connected with the court proceedings referred to above, legal fees in the sum of £2,474 were incurred. Once again, the Tribunal saw the primary invoices in this regard and this sum is allowed.

18. The sum of £4,725 has been claimed in respect of building repairs and maintenance. This too was challenged on behalf of the Respondents. These were works carried out by the property management arm of KLPA & Company and there were no invoices from third party contractors. Mr. P. Anand referred the Tribunal to internal invoices raised by the Estate Building and Maintenance Department of KLPA & Company and which appear at Tab 2 of Bundle 2. The Tribunal would have preferred to have seen further particularised and documented evidence in respect of the materials and labour included on these invoices. Mr Anand told the Tribunal that this was not possible, because so far as the materials are concerned, specific quantities of the kind referred to in the individual invoices were not purchased but were taken from bulk purchases which the maintenance company obtained in order to reduce overall unit costs. The Tribunal, with some reservations, allowed the sum claimed (with one exception) on the basis that the sums claimed making up the overall sum, on their case, do not appear unreasonable for the services supplied. However Mr Anand was only able to show the Tribunal invoices totalling £4,000 and that is the reduced sum allowed by the Tribunal.

19. The sum of £1,080 was charged for garden maintenance. The Tribunal saw the garden area concerned, it is relatively small, and the sum of £1,080 has been charged on the basis of a fortnightly visit of 4 hours at £60 per visit ie 4 hours at £15 per hour. Mr Shah noted that the £60 charge seemed excessive due to the size of the garden. Gardening services were not provided throughout the year and in the view of the Tribunal, given the size and nature of the garden area (which is really a patch of lawn), an allowance of 2 hours per visit would be reasonable; accordingly 50% of the claimed amount ie £540 was found to be reasonable and is allowed.

Year ending 31 December 2007

20. This year involves expenditure of the highest kind during the entirety of the period with which the Tribunal is dealing. The total service charge expenditure for that year was £24,500.71 on the case of the Applicant. This would result in an individual payment for each leaseholder of £1,750.05 – on any view a very high payment for flats in this kind of property and in this type of area. By far and away the greatest charges during that service charge year were an insurance premium of £8,900.82, and also expenditure by way of building repairs and maintenance of £8,375.
21. All of the items of expenditure claimed during that year (which can be seen set out in the accounts at page 706) are challenged by the Respondents with the exception of the electricity charge for the year of £473.26.
22. Dealing with the building insurance premium first, this figure of £8,900.82 is on any view an extraordinarily high figure for the insurance premium for a property of this type. The Respondents flagged up their objections to this premium at an early stage and in particular on the occasion of the first abortive hearing on 27 July 2010. As a result of that matter having been notified at an early stage, the Tribunal gave directions at the abortive hearing and in particular paragraph 5 of those directions, the order was made in relation to the insurance premium:
- “A substantial part of this case involves alleged failure to pay insurance premium contributions. If these contributions are to be challenged, the Tribunal will need to know the reason for such challenge, and also if an alternative quotation for each year is to be relied upon, the Respondents will need to demonstrate that the alternative relied upon is indeed “like for like cover”. In this regard, the Tribunal relies on the Applicant to supply the Respondents, if so requested, **without delay** with a copy of the insurance policy, the terms of insurance cover, the relevant claims history and all other information reasonably required to obtain an alternative quotation”*
23. When the matter came before the Tribunal on the adjourned hearing date, Mr Anand, for the Applicant, was of course questioned by the Respondents and the

Tribunal about why this figure was so high. He told the Tribunal that in 2006 there were extremely serious water damage claims made against the insurance cover and in respect of seven or eight different flats at the property. The damage from the leakages referred to in the previous service charge year dealt with, was very extensive indeed and each leaseholder claimed individually against the insurance, they having carried out and paid for the repair work themselves. The result of this was that the premium increased by some 300% because he (Mr Anand) found that almost no insurer was prepared to insure the property, given the size of these claims (around £150,000). He told the Tribunal that the insurance was placed in the ordinary way with brokers who had served him or his companies for many years and in respect of whom he had total confidence.

24. Cross-examined by the Respondents, Mr Anand rejected the contention that the sum insured (approximately £1.6 million declared value) was too high. The Respondents were unable, (save as will be referred to below), to put some other professional valuation of the property to him. He accepted that in respect of four of the flats affected, either he or a company of which he had control (P&A Brothers) was the relevant owner. He rejected absolutely emphatically that he had made inflated claims in respect of these flats, knowing that the sums would in due course be recoverable from the leaseholders in general by way of service charge. He pointed out that insurance companies are not usually overly generous in making payments of this kind and that all the claims made were the subject of scrupulous checking by loss adjusters appointed by the insurers.

25. It was also put to him that the leakage from the relevant flat had come about as a result of general failure to maintain on the part of the Applicant. Once again, as referred to in the preceding year, he pointed out that the problem (and there was no evidence to rebut this) had come from defective piping below the screeded floors and in respect of which ordinary maintenance checks would have made no difference.

26. Although these matters were put in general terms by Mr Shah perfectly competently and reasonably on behalf of the Respondents, the Respondents did not in fact put any comparable insurance evidence before the Tribunal. It is correct that they were able to obtain some quotations of a fairly speculative kind which were not based upon a similar claims history. This was a matter of regret because, as indicated above, the Tribunal had attempted to anticipate this situation arising by giving careful directions for the exchange of all relevant material necessary to obtain a meaningful alternative quotation. In the event it was confirmed on behalf of the Respondents that they had never made any request for the details set out in the directions referred to above and therefore had not obtained a "like for like" quotation.
27. The result of this is that on the balance of evidence before the Tribunal, there was an explanation for the very high insurance premium for this year and no significant alternative evidence put before the Tribunal on behalf of the Respondents, other than submissions by way of suggestion.
28. Accordingly, on the balance of the evidence before the Tribunal the sum is, with some hesitation, allowed, given that an explanation has been put forward which has not, on the evidence before the Tribunal, been rebutted on behalf of the Respondents.
29. An agency [fee] of £1,335.13 was initially claimed on behalf of the Applicants. It is unnecessary to go into the detail, but a lower sum was agreed on behalf of the Applicant at the hearing of £655.34, which is the sum determined by the Tribunal as being reasonable.
30. An accountants' fee of £470 for preparing the accounts for that year and other accountancy services was claimed. The Tribunal saw the relevant documentation in this regard and although the fee is at the upper end of the scale, the sum is allowed as claimed.

31. A sum of £8,375 was claimed in respect of building repairs, maintenance and renewals. This sum was also challenged on behalf of the Respondents and the Applicant referred to the invoices appearing at pages 719 to 737. At page 719 there is an invoice from KLPA & Company, Estate Maintenance Department which is the maintenance wing of KLPA & Company. As indicated above, Mr P Anand, Mr K Anand's son, is one of the two partners in that business. The invoice sets out a charge of £975 for cleaning, rubbing and preparing all the walls of the four floors for painting and then repainting with one coat of emulsion. There is also work included relating to the painting of the ceiling of the common part of the stairs to all floors and the preparation and painting of wood panels and windows on all floors. It was pointed out to Mr Anand that work of a similar kind had been done the previous year and indeed there were duplicative parts of work mentioned in the other invoices, to which reference has been made. His general response to this was that he did not want the property to become shabby and that he has a duty or his company has the duty to keep the property in appropriate repair, both under the terms of the leases and for insurance purposes.
32. The Tribunal considered carefully the invoices in support of this charge and in addition took into account the matters observed by the Tribunal at the inspection. Some of the work charged for during this year involves the removal of the existing floor tiles in the common parts at the property and their replacement with new tiles. So far as could be ascertained by the Tribunal, it was the same tiles which were in situ at the time of the inspection. These tiles, in the view of the Tribunal, had not been well laid, were lifting in several parts and were of generally, what appeared to be, poor quality. Furthermore, there is indeed some duplication in the amount of paintwork carried out to the common parts which the Tribunal was not persuaded was entirely and sufficiently explained by the account given by the Applicant. Some of the painting had been carried out for example in just the preceding service charge year. Doing the best it can on the information before it, the Tribunal allows a figure representing two thirds of that claimed for during this service charge year, which remains a relatively high sum, that sum being £5,527.50.

33. A further sum is claimed during this year in the sum of £2,496.50 in respect of garden maintenance. For the same reasons as indicated in the analysis provided for the preceding service charge year, the Tribunal judges this to be higher than is reasonable and allows the sum of £935, calculated on the basis of a full year and at the same rate as referred to in the preceding service charge year.
34. Finally, for this service charge year, a managing agents' fee of £2,450 has been claimed which was challenged on behalf of the Respondents. This fee amounts to £175 per flat which the Tribunal considers to be within the appropriate range for properties of this kind. This sum is therefore allowed.
35. Taking into account the matters referred to above, a service charge totalling £19,411.92 is determined as being reasonable, as set out in the schedule attached hereto.

Service charge year ending 31 December 2008

36. The accounts for this year can be found at page 932 in the third hearing bundle. The total service charge claimed for that year is £17,156.15, amounting to a charge for each leaseholder of £1,225.44. The separate service charge heads are disputed on behalf of the Respondents for similar reasons to those indicated above and in respect of the preceding service charge year.
37. Taking these items in turn there is, once again, a high insurance premium in the sum of £8,900.82, the exact same sum as the preceding year. The explanation given on behalf of the Applicant was the same as in respect of the preceding year, that is to say that there was an extremely unattractive claims history now attached to the property which rendered it almost uninsurable, and in addition, the financial global crisis had rendered the insurance industry somewhat "erratic". For the same reasons as indicated in the preceding year and with the same hesitation, this sum is allowed as claimed in the absence of proper evidence to rebut it.

38. A claim of £517.50 has been made for accountancy fees, the accounts for this year are not complicated and there appears no good explanation as to why the already fairly full sum of £470 claimed for the preceding year has increased. The Tribunal determines that the sum of £470 is the reasonable fee as claimed in the preceding year.
39. Building repairs in the sum of £1,295 were challenged on behalf of the Respondents. The Respondents put forward a figure of £350 which was rejected as far as the Applicant was concerned. The sums claimed for this year, as reflected in the invoices produced, seem to the Tribunal to be reasonable and are allowed as claimed.
40. A gardening maintenance fee of £2,750.75 has been claimed for this year. Once again, these charges were challenged on behalf of the Respondent, given the relatively modest size of the garden area. Once again, the Tribunal considers this unreasonable for the reasons already indicated above. The Tribunal considers that a reasonable sum to claim for this maintenance is 32 weeks at 2 hours per visit at £15 per hour, which computes to £960. In addition, there was a specific attendance during the week ending 7 February 2008 in respect of which an invoice appears at page 942 during which various rubbish was removed from the property area, as well as carrying out itemised gardening jobs, all totalling £286.75. This too seems reasonable to the Tribunal to be added to the sum already mentioned and an overall sum under this head of £1,246.75 is therefore allowed.
41. Finally, the managing agents fees have been claimed this year in a total sum of £3,500 which represents an increase per unit to £250 per flat, as opposed to the £175 per flat charged in the preceding year. So far as the Tribunal is concerned, this is an excessive percentage uplift in one year; the sum of £200 per unit is allowed as reasonable, amounting to £2,800 in all.
42. The result of these findings is that the total sum of £14,904.65 is allowed for this service charge year, as set out in the schedule attached hereto.

Service charge year ending 31 December 2009

43. The accounts for this year can be found at page 1215 in the third bundle of documents used at the hearing. The total service charge expenditure claimed for this year is £19,474.33 amounting to £1,391.02 per leaseholder.
44. The first item challenged was an insurance premium of £9,961.58. This sum was challenged for the same reasons as have already been examined in preceding years and equally defended on the same basis. The premium for the preceding years (2 years) was £8,900.82. This an extremely high level of premium, but the Applicant did assert that premiums had increased due to an erratic market following the collapse of AEG, and he had accepted his brokers recommendation he said. With some reluctance the premium (in the absence of any comparable contrary evidence is allowed as reasonable. However the Tribunal would expect to this figure reverting to the pre-flooding level (excluding ordinary uplifts) in subsequent years.
45. The electricity claim for £250 was not challenged and the accountancy fees of £470 are allowed, for the same reasons as indicated in the preceding year.
46. A building repairs maintenance and renewals claim was made in the sum of £2,047.50. This sum was accepted by Mr Shah. The Tribunal saw the relevant invoices generated by the Applicant's KLP A Estate Management Department. One of the specific items or bases for initially challenging the general repairs, was that the Applicant had taken insufficient steps to ensure that there was good security at the front entrance, as a result of which, vandals were able to enter the common parts and do damage from within. However Mr Anand rejected this allegation on the basis that it was leaseholders who often, either themselves or through their sub-tenants, allowed the front door to remain open, therefore giving easy access to undesirables. Mr Katugampola, the leaseholder of Flat10 gave evidence to the Tribunal. Apart from some observations made by Mr Pintu Patel, on the first day of the hearing, Mr Katugampola was the only witness who appeared for the Respondents before the Tribunal. In respect of this particular matter, he supported

the Applicant in saying that he agreed that it was often leaseholders who allowed the door at the front of the property to remain on the latch, as a result of which people came into the property and applied graffiti or did other damage in the common parts. The sum claimed in all the circumstances, having been examined by the Tribunal and taking into account the relatively generalised criticism from the Respondents is allowed in the sum of £2,047.50 as claimed.

47. A sum of £2,895.25 has been claimed in respect of gardening maintenance. This was challenged, and once again the Tribunal considers that it is in excess of what is reasonable for the purposes of the Act. For the preceding year an hourly rate of £15 was allowed which for this year the Tribunal would increase to £17.50. On the basis of 32 visits at 2 hours on each occasion, a total charge of £1,120 is arrived at. There are specific other individual jobs which were authenticated by invoices at page 1220 (£217.25) and page 1227 (£150 in relation to tree works) which also appear to the Tribunal to be reasonable. This amounts to a total of £1,487.25 which is the sum which the Tribunal allows under this head.
48. A managing agents fee in the sum of £275 per flat has been claimed for this year, totalling £3,850. For the same reasons as indicated in the preceding year, although this is within the range of some better quality and better situated flats with which the Tribunal has dealt, the level of managing and nature of duties relating to these flats merits, so far as the Tribunal is concerned, a sum of £200 per unit as being a reasonable for the purposes of the Act. It is this sum that is therefore allowed amounting to a total of £2,800 and which will be seen to appear in the schedule attached to this decision.

Costs

49. Neither party before the Tribunal made any application in respect of legal costs. So far as the Respondents were concerned, this may have been because they were not the parties making the application, and, having no legal representation, they were unfamiliar with the provisions of section 20C of the Act. Some leases allow a landlord to recover costs on connection with the proceedings before the Tribunal as

part of the service charge. In such circumstances, on application by the tenant, the Tribunal may make an order precluding such recovery wholly or in part.

50. No such application was made by or on behalf of the tenants at the hearing. However, having considered the lease, the preliminary view of the Tribunal is that there is no such provision in this lease anyway, entitling recovery of such costs as a service charge. There is a tenant's covenant at clause 2(22) to pay costs in respect of costs relating to section 146 of the Law of Property Act 1925 – but not as a service charge.
51. No concluded finding is made in this regard because there has been no express argument on the matter. Equally, no direction under section 20C is made, because no application has yet been made by the tenants, and in any event, in the Tribunal's preliminary view, none would be necessary because the terms of the lease do not entitle recovery of such costs anyway.
52. These observations are offered in the hope that the parties may be able to agree these matters without further reference to the Tribunal. In the unfortunate event that this proves impossible, (which would only be the case if the Applicant felt that the lease entitled recovery of such costs as a service charge), permission is granted to the parties to submit written representations (on the question of these costs only) of no more than 3 A4 sides each, by no later than 14th January 2011. The Tribunal will then issue a short supplementary decision on this aspect of costs. As indicated, it is earnestly to be hoped that this will prove unnecessary.

Legal Chairman: S SHAW

Dated: 17th December 2010

Service Charge
Schedule of disputed items

	y/e 31.12.09		y/e 31.12.08		y/e 31.12.07		y/e 31.12.06		y/e 31.12.05	
	claimed	allowed	claimed	allowed	claimed	allowed	claimed	allowed	claimed	allowed
Building Insurance agency fee	£9,961.58	£9,961.58	£ 8,900.82	£ 8,900.82	£ 8,900.82	£ 8,900.82				
					£ 1,335.13	£ 655.34				
Building repairs	£ 2,047.50	£ 2,047.50	£ 1,295.00	£ 1,295.00	£ 8,375.00	£ 5,527.50	£ 4,725.00	£ 4,000.00		
Garden maintenance	£ 2,895.25	£ 1,487.25	£ 2,750.75	£ 1,246.75	£ 2,496.50	£ 935.00	£ 1,080.00	£ 540.00		
Legal & associated Professional fees							£ 2,474.00	£ 2,474.00		
							£ 563.00	£ 563.00		
Managing agents fee	£ 3,850.00	£ 2,800.00	£ 3,500.00	£ 2,800.00	£ 2,450.00	£ 2,450.00				
Accountants charges	£ 470.00	£ 470.00	£ 517.50	£ 470.00	£ 470.00	£ 470.00				
		[disallowed £2,458.00]		[disallowed £2,251.50]		[disallowed £5,088.79]		[disallowed £1,265.00]		
TOTAL for year	£19,474.33		£17,156.15		£24,500.71		£15,606.00		£ 6,006.17	
		£17,016.33		£14,904.65		£19,411.92		£14,341.00		£ 6,006.17
<hr/>										
	y/e 31.12.04		y/e 23.06.04		y/e 23.06.03		y/e 23.06.02			
Entryphone				£ 321.16	£ 321.16					
Managing agents fee			£ 1,190.00	£ 1,190.00			not disputed	not disputed		
TOTAL for year			£ 5,218.42		£ 6,751.79		£10,144.00		£ 9,981.00	
			£ 5,218.42		£ 6,751.79		£10,144.00		£ 9,981.00	
Insurance placed by Landlord 15% admin charge							£ 3,503.42	£ 3,503.42		
							£ 525.51	£ 525.51		
							£ 4,028.93			

