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Residential  
Property  
TRIBUNAL SERVICE

**Leasehold Valuation Tribunal**

**LON/00AZ/LSC/2010/0590**

**London Rent Assessment Panel**

**Landlord and Tenant Act 1985 sections 27A and 20C**

**Address:** Forest Hill Court, Dartmouth Road, Sydenham,  
London SE26 4RL

**Applicant:** General Bureau Limited (lessor)

**Represented by:** Mr M Tejada & Ms Z Byass of HML Andertons (managing  
agents) & Ms T Galliard de Laubenque (director of General  
Bureau Limited)

**Respondents:** (1) Dr M J Ngala (lessee, flat 1)  
(2) Mr I J Morley (lessee, flat 2)  
(3) Ms S Kaffo (lessee, flat 3)  
(4) Ms C Idun (lessee, flat 6)

**Represented by:** (No appearance)

**Tribunal members:** Mr T J Powell LLB (Hons)  
Mr C Kane FRICS  
Mrs J Clark JP

**Application dated:** 26 August 2010

**Paper directions:** 9 September 2010

**Hearing:** 1 November 2010

**Decision:** 2 November 2010

### **Decisions of the Tribunal**

- (1) Having considered the documents presented and heard submissions from the Applicant's managing agents, the Tribunal determines that:
  - (i) the consultation procedures had been carried out in accordance with section 20 of the 1985 Act, as amended, and subsequent regulations;
  - (ii) the cost of roof repairs is recoverable under the lease;
  - (iii) the works are clearly necessary; and
  - (iv) if the proposed cost of £4,417.27 per flat were to be incurred for these works, such costs would be reasonable.

### **Background**

1. The Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, as amended, of the reasonableness and/or the liability to pay advance service charges in respect of the cost of proposed major works, namely the re-roofing of Flats 1-6 Forest Hill Court, Dartmouth Road, Sydenham, London SE26 4RL.
2. It was contended that the repairs are urgently needed as the roof is in disrepair and may not survive another year. It also appeared from the application and supporting documents that the Applicant has carried out a consultation with leaseholders pursuant to section 20 of the 1985 Act.
3. However, it appeared that the lease does not make provision for advance payments in respect of service charges or the cost of major works. The application therefore posed two questions for the Tribunal:
  - (i) "Is the Tribunal's opinion of the lease also that cash calls are not admissible"? and
  - (ii) "If cash calls are not allowed by the lease terms, General Bureau Ltd wish to seek dispensation to carry out a cash call at this time in order to seek funds from the lessees to replace the roof in question".
4. Paper directions were made on 9 September 2010, with a view to an early hearing.

## The Law

5. Service charges and relevant costs are defined in section 18 of the 1985 Act. The amount of service charges, which can be claimed against the lessees is limited by a test of reasonableness, which is set out in section 19 of the 1985 Act.
6. So far as the current application is concerned, the Tribunal can make a determination under section 27A(3) of the 1985, which reads:

“(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (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, and
- (e) the manner in which it would be payable. “

## The lease

7. The specimen lease in respect of flat 1 was made between (1) Cityfield Properties Limited (freeholder), (2) Horte Developments Limited (builder) and (3) Cynthia May Payne (leaseholder). The lease was dated 4 January 1965 and ran for 99 years from 4 January 1965.
8. Tribunal was also provided with specimen leases to flats 3 and 6, which were in near-identical terms.
9. The leases did not contain provision for any advance payment of any of the freeholder's costs, save for the costs of insurance. However, a Deed of Variation dated 12 February 1991 made between (1) General Bureau Limited (freeholder) and (2) Jacqueline Marie Hartnett and Brian Hartnett (2), in addition to extending the term to 999 years, provided in clause 4D that:

“THE following Clause 2(w) shall be added to the Lease: ‘The Lessee shall pay to the Lessor by equal monthly instalments on the First day of each month on **account** of his/her service charge liability a maintenance payment of Ten pounds or **such greater sum as the Lessor shall from time to time determine.**’ “  
*[emphasis supplied]*

### **The hearing**

10. At the hearing the Applicant was represented by Mr M Tejada (associate director) and Miss Z Byass (estate manager), both of HML Andertons, managing agents, and Ms T Galliard de Laubenque (director of the freehold company).
11. None of the Respondents attended the hearing. Although there had been a response to the application from Ms S Kaffo of flat 3, she had indicated in a letter to the Tribunal that she would be unable to attend the hearing.
12. The original application had been brought against four of the 12 leaseholders in Forest Hill Court, being the only leaseholders who had not paid in advance for their contribution to the cost of proposed roof works. However, by the date of the hearing, Ms Idun in flat 6 had paid her share and so the application preceded against the other three.

### **The facts**

13. Forest Hill Court is a purpose-built block of 12 flats constructed in about 1965, which has a flat roof. The block is structured in two halves served by separate entrances. The roof is divided by a party wall.
14. Although Ms Kaffo invited the Tribunal to inspect the property, the Tribunal did not feel the need to do so, as the bundle contained numerous colour photographs of the roof in question.
15. The flat roof above flats 7-12 was re-covered more than 10 years ago. However, the flat roof above flats 1-6 is in a severe state of disrepair. After on-going problems with water penetration into flat 6 on the top floor, which required a number of patch repairs, a condition survey of the roof was commissioned in August 2009 from Survey Roofing. They diagnosed that the roof was constructed using Strammit board, a straw-based boarding material, and the roof coverings were beyond economic repair. Due to water penetration the structural integrity of the roof boarding had also been compromised and a new roof was now required.
16. In addition, there is a hole in the roof above flat 6, which is large enough so that daylight can be seen from within the flat. This damage is severe and continues to degrade.

17. The property has a history of self-management until HML Andertons took over in June 2007.

### **Consultation procedure**

18. The Tribunal saw evidence of the consultation undertaken by HML Andertons pursuant to section 20 of the 1985 Act. The Initial Notice was dated 8 October 2009 and the Second Stage Notice was dated 15 March 2010. One observation had been received from leaseholders, proposing three roofing contractors, all of which were approached by the managing agents, and one of which had responded to the invitation to tender for the roofing works.
19. The Second Stage Notice notified leaseholders that the Applicant intended to appoint K & B Roofing Contractors to carry out the proposed works at an expected total cost of £53,007.18 including fees and VAT. That total cost would be split between the 12 flats at a cost of £4,417.27 per flat.
20. There was no challenge to the consultation procedure by any of the Respondents.

### **Ms Kaffo's response**

21. Ms Kaffo's response to the application dated 8 October 2010 stated: "I consider it highly unreasonable to suddenly raise a need for repair and request for monies of such magnitude with no previous warnings of the cumulative roof problem." She considered that the roof above flats 1-6 should have been considered at the same time as the re-covering of the roof above flats 7-12. She also made some unrelated complaints about the inferior condition of the block containing flats 1-6.

### **Submissions made by the Applicant**

22. The application had been made due to the fact that the managing agents considered that there was insufficient provision within the lease to demand payments in advance to enable them to carry out major works. They were aware that the Deed of Variation did make some provision for interim payments but as these were to be spread over a 12-month period they would still have insufficient funds available to carry out these works in a timely fashion.
23. The present directors of the freehold company were aware of their responsibilities to maintain the property and wished to regularise the financial arrangements for

the maintenance of the property. The company had appointed external managers, HML Andertons, in June 2007 and now wanted the agents to carry out the roof works at the earliest possible opportunity. A letter from S & R Surveyors Limited dated 20 October 2010 stated: "The coverings are well past the end of their useful life and now require replacement". Mr Tejada described the works as 'urgent', especially given the current water ingress into flat 6.

### **The Tribunal's decision**

24. Having considered the documents presented and heard submissions from the Applicant's managing agents, the Tribunal determines that:
- (i) the consultation procedures had been carried out in accordance with section 20 of the 1985 Act, as amended, and subsequent regulations;
  - (ii) the cost of roof repairs is recoverable under the lease;
  - (iii) the works are clearly necessary; and
  - (iv) if the proposed cost of £4,417.27 per flat were to be incurred for these works, such costs would be reasonable.

### **The reasons for the Tribunal's decisions**


25. The notices of 8 October 2009, 15 March 2010 and 23 April 2010 had satisfied the requirements of section 20 of the 1985 Act, and the Tribunal received no objections to the consultation procedures from the Respondents.
26. By clause 3(2) of the lease the Lessor covenants:
- "To repair and keep in tenantable repair the retained parts of the Building and ... will maintain redecorate and renew the structure and common parts of the Building and premises."
27. By clause 2(h) of the lease the Lessee covenants:
- "At all times during the said term to pay and contribute one equal twelfth part of the expense of the external painting of the Building and of making repairing maintaining supporting rebuilding ... all ... party structures ... belonging to or used or capable of being used by the Lessee in common with the Lessors or the Lessees of occupiers of the other parts of the Building ..."

28. The need for the roof works, described in detail in the letter of 15 March 2010, was confirmed by the letter from S & R Surveyors Limited dated 20 October 2010 and the photographs provided by the managing agents. None of the Respondents disputed the need for the works to be carried out. The Tribunal was satisfied that the roof works were indeed urgent.
29. The proposed costs appeared to the Tribunal to be reasonable because the managing agents had proposed to accept the lowest tender.
30. Nothing in this decision prevents the lessees challenging the actual costs of the works, if they are not satisfied with the quality or standard of the work.

### **The date and manner of payment**

31. The freehold company is jointly owned by all 12 lessees. It has no income of its own and, the Tribunal was told, apart from the lease provisions it has no capacity to raise money to meet its repairing obligations. The managing agents said that the freehold company had to raise monies in advance from lessees before placing the contract for the roof works.
32. The lease itself does not provide for advance payments apart from the cost of insurance. Clause 4D of the Deed of Variation provides that the lessees shall pay monthly on account instalments towards the service charge liability in the sum of £10 "or such greater sum as the lessor shall from time to time determine."
33. The Tribunal urges the first three Respondents to pay the amount of £4,417.27 demanded in advance to enable the freehold company to comply with its repairing obligations.
34. In the event that they do not do so, the Applicant may utilise the provisions of clause 4D to demand this sum of £4,417.27 over 12 monthly instalments, and may no doubt take appropriate action for recovery in the event of default.

Chairman:

  
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Timothy Powell

Date:

2 November 2010