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Ref: LON/00BE/LSC/2010/0649

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER s 27 OF THE LANDLORD AND TENANT ACT 1985**

Applicant: Maidstone Buildings Residential Limited

Represented by: Mr P Godbold of Warwick Estates Property Management

Respondent: Freehold Estates Limited

Represented by: Leasehold Property Management Limited

**Premises: 1-10 Norfolk House, 1-12 Wiltshire House, 1-15 Sussex House,
Maidstone Mews, 72-74 Borough High Street,
London SE1 1GF**

Hearing date: 15 December 2010

Member of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA

Date of Tribunal's decision: 15 December 2010

**1-10 NORFOLK HOUSE, 1-12 WILTSHIRE HOUSE,
1-15 SUSSEX HOUSE, MAIDSTONE MEWS,
72-74 BOROUGH HIGH STREET, LONDON SE1 1 GF**

BACKGROUND

1. This was an application dated 22 September 2010 pursuant to s 27A of the Landlord and Tenant Act 1985, as amended, for determination of the reasonableness and liability to pay the insurance premiums for the subject property for the year 2010-2011. The property is a block of 52 residential flats over commercial premises, including a restaurant and a café, in a converted Victorian building constructed about 1850. The Lease dated 29 July 1999, between Lanebright Limited and the Head Leaseholder, gave the right and obligation to insure the building to the freeholder, Freehold Estates Limited, but the Applicant, the Head Lessee, Maidstone Buildings Residential Limited, had made the application to the LVT because of concern about the level of insurance premium for the current year. Directions were issued on 20 October 2010 following a PTR on the same date. The matter came before a duly constituted Tribunal during the week beginning 13 December, the parties having agreed that unless an oral hearing was requested by either party, the case should be determined on the LVT's paper track without any such oral hearing.

THE CASE FOR THE APPLICANT

2. Warwick Estates Property Management Limited act on behalf of the Applicant, Maidstone Buildings Residential Limited, and upon their appointment in April 2010 they evaluated the insurance premium levied (said in the application form to be £46,973,09) and commissioned a valuation in order to confirm that the building was correctly valued and the premium correctly calculated on the basis of that underlying valuation. The valuation, undertaken by Robert Oliver Limited, Chartered Surveyors, gave the buildings a reinstatement value of £10,975,000 as at 19 May 2010, the day of inspection, and confirmed this in a report dated 25 October 2010. The managing agents then compared this with the details of the freeholder's

equivalent policy, which allowed for a rebuilding cost of £20,760,309 with a present insured value of £26,230,476 (residential £12,890,267, commercial £7,870,042). They then approached their own broker (Adler Insurance) for like for like quotations for the period 14 June 2010 to 14 June 2011, and this broker ultimately provided quotations from Allianz, of a total of £11,685,08 (including IPT and terrorism cover) based on a sum insured of £14,267,500; Brevent Insurance, of a total of £27,507.19, including IPT and terrorism cover, and ERS (Essential Risk Solutions) recommending an Aviva policy at a premium of £17,325,000. However this latter quotation, which was subject to survey, did not include the same breakdowns as the others, in particular not specifying whether it included IPT and terrorism cover.

3. Warwick Estate had first written to the freeholder's agents on 17 June 2010, asking for permission to insure themselves at the "drastically" reduced cost, to which they received the reply that the Lease stated that the freeholder was to place this insurance, but adding that if in the following year the Lessees were unhappy with the policy premium they should inform the managing agents "prior to the renewal date with alternative quotes on a like for like basis". The Lessees' managing agents then, in a further letter of 21 July 2010, wrote again offering alternatives, viz for the freeholder's agents either to insure with one of the companies whose quotations the Lessee's managing agents had obtained, or else to match the lowest of their alternatively quoted premiums, on the grounds that the freeholder's charges, which according to the terms of the Lease the Lessees were to pay, must be reasonable.

4. The freeholders' managing agents had declined to accept any of these options, the Applicants had then applied to the LVT, and Directions were issued dated 20 October 2010, following a PTR in which Mr P Godbold of Warwick Estates had said that the total premiums under the freeholder's present policies exceeded £60,000 p.a. and that the underlying insurance valuation used was excessive. The usual Directions issued required 3 like for like quotations to be provided to the Respondents by the Applicants, who were to disclose the claims history (which had apparently included several claims for accidental damage between 2007 and 2010). The agents for the freeholder did not attend the PTR but had sent written representations, later repeated in their statement of case, that their brokers had been unable to obtain alternative quotations to the premiums they had been obliged to pay, owing to the claims history.

The agents for the Applicants had then obtained their own alternative quotations, but (as these did not arrive with the Respondents by the date specified in the Directions) the Respondents took exception and asked the LVT to exclude them. The Tribunal nevertheless accepted all the documentation submitted, as it was not particularly late, together with the comments on behalf of the freeholder, who also noted that the Brevent quotation had some inferior terms to their own policy, and queried whether Brevent knew about the claims history. They also repeated some of their earlier objections and also commented that the property was already insured with AVIVA so that they considered the Applicant's new quotation from AVIVA must be "void".

THE CASE FOR THE RESPONDENT FREEHOLDER

5. In summary the Respondent's case was that the ERS broker's documentation had made no reference to the claims history nor had it given any details of the broker, (ie of the company registered number, registered address or FSA status), that it also did not state what was covered by the policy proposed and as there was no summary or full insurance policy wording, that it was impossible to determine that that quotation was based on a like for like basis with the Respondent freeholder's cover. The Respondent also took exception to the absence from the Applicants' insurance valuation of confirmation that that valuation had included the mix of commercial units with the residential flats nor was there any indication of the sum to be allocated to insurance for those commercial units. They claimed that the only other quotation had been for underwriting by Allianz but objected that the freeholder's broker had already reported that Zurich, Allianz and Fortis had all declined to quote on both occasions when they had been approached (ie on the basis of the freeholder's original valuation and on the revaluation following that carried out by the Respondent's surveyor) and that this had been because of previous claims history. They thus queried whether the claims history had been declared by the Applicants since these insurance companies had declined to quote for the freeholder on the basis of adverse claims history.

6. The Respondent in response to the Applicant's statement of case had also stated that the freeholder's commission had been £4,650.76, but that the managing agents did not earn any commission in this regard. They had produced the insurance

certificate both for the original sum insured and for the amended sum insured, as this had been reduced to match the insurance survey and their own insurance valuation, plus the confirming letter from their own broker Residents Insurance Services, evidencing that Zurich, Allianz and Fortis had declined to quote for the freeholder due to the poor claims history.

DECISION

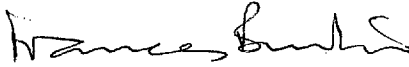
7. It is clear that the Applicants have produced some quotations for insurance of their building that are cheaper than that provided by the freeholder. Nevertheless it has long been accepted that the freeholder who has the right and obligation in the Lease to insure the building is not obliged to take the cheapest quotation. A freeholder is however required to shop around for competitive cover and to have regard to the fact that when requiring the Lessees to reimburse the freeholder for insurance premiums other people's money is being spent, so that strict care should be taken to obtain competitive terms. Without the full content of the policy document in each case it is impossible for the Tribunal to determine whether an alternative quotation is genuinely a contract providing like for like cover. It seems to the Tribunal that the Respondent is wrong to say that ERS' documentation does not show an FSA number (since one is printed on its headed paper which also shows an address) but the real problem is as mentioned – insufficient detail of what the alternative cheaper premiums would provide. In particular alternative quotations have to be examined carefully as some indicate individual instances of better or worse cover than that to which they are being compared and it is only possible to evaluate such cover as a whole if the Tribunal is provided with the entire policy wording. It is impossible on the basis of the documentation presently provided to the Tribunal to determine whether the cheaper quotations from Aviva and Allianz would in fact provide the same cover as is currently in place under the freeholder's policy.

8. The Tribunal is therefore of the view that there is insufficient evidence to determine that the premium for 2010-2011 is *not* reasonable or reasonably incurred as there is, for example, no evidence that the alternative quotations cover the commercial premises, which include a café and a restaurant, nor that the freeholder's insurance valuation for reinstatement is necessarily wrong, in that the building is also

large, of 5 storeys and in an urban area where access for rebuilding in the event of destruction, eg in a terrorist attack, could be very expensive. Further, the freeholder's broker has not left an uncompetitive premium remain in place without shopping around for alternative quotations and has disclosed the commission that is received for arranging the building insurance, so that it cannot be said that proper research has not been done and competitiveness acknowledged.

9. However, as the insurance year is now half way through it would appear that the way forward, in the light of the discrepancies which do exist in (i) the valuations for the underlying reinstatement value and (ii) the premiums, is for the Applicants to embark *now* on the course suggested by the freeholder's managing agents last July ie since the Lessees clearly are unhappy with the premium they should now set about researching alternative quotations for property owners' policies for the whole building, should assemble their evidence and then go back to the freeholder's managing agents with their alternative quotations in good time before the next renewal in June 2011, as invited in LPM's letter of 9 July 2010, making sure that they have obtained not only full parity in like for like quotations, but also that there is complete documentation of that .

10. Accordingly the Tribunal determines that the premium for the building insurance for 2010-2011 is reasonable in amount and reasonably incurred since there is no evidence to suggest that there is a more cost effective alternative, but that the freeholder should be alert to the fact, when their broker researches the market for the June 2011 renewal, that there may be better terms available and that the Lessees are entitled to a market rate in terms of value for money for cover provided.

Chairman..... 
Date..... 15. 12. 2010 .