

8182



**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL

Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Act")

Case Number:	CHI/43UF/LVA/2012/0001
Property:	Sandhills, 42 Meade Court, Walton on the Hill, Tadworth, Surrey KT20 7PJ
Date of Application:	8 May 2012
Applicant:	Mr Simon Wills (Flat 1) Miss Paula Slayford (Flat 2) Mr and Mrs Rayment (Flat 3) Ms Boucher (Flat 4) Mr Steve Martin (Flat 5) Mrs Margaret Curtis (Flat 6) Mr and Mrs Burton (Flat 7) Mr Redfearn (Flat 8) Mr Tapper (Flat 9) Mr Mike Webb (Flat 10) (all represented by Appre Management Services Ltd)
Respondents:	Sinclair Gardens Investments Ltd (represented by Hurst Managements)
Date of consideration:	19 September 2012
Tribunal:	Ms E Morrison LLB JD (Lawyer Chairman) Mr R A Wilkey FRICS (Valuer Member)
Date of the Tribunal's Decision:	19 September 2012

The Application

1. The Applicant tenants applied under Schedule 11 of the Act for a determination of their liability to pay an administration charge, being the sum specified by the Respondent landlord as payable for licences consenting to the replacement of the windows at Sandhills. The application stated that the total sum being requested was £2750, made up of £250 per flat plus £250 in respect of the window in the common parts.

Procedural Background

2. By directions given on 3 July 2012, the Tribunal ordered that the application would be determined on the basis of written representations unless any party objected. The Applicants' case having already been set out, the Respondents were directed to respond by 24 July 2012.
3. On 18 July 2012, Hurst Managements (Hurst), the Respondent's representative, wrote to Appre Management Services Ltd (Appre), the Applicants' representative, denying it had ever suggested that a licence to replace the windows was mandatory requirement or that the landlord's consent was required. The Tribunal then wrote to Appre asking whether it wished to withdraw the application. Appre responded to Hurst on 31 July stating the application would not be withdrawn until "it has been made clear that no money or permission is needed to replace the windows at Sandhills".
4. In a witness statement dated 8 August 2012, the Respondent set out its case.
5. Neither party having objected, the Tribunal has determined this case on the basis of written representations without an oral hearing.

The Leases

6. The Tribunal was provided with copies of the leases for Flats 1 and 7, each for a term of 125 years from 1 January 1996. The parties to each lease are the (1) original landlord (2) Sandhills Residents Company Ltd, described as "the Manager" and (3) the original tenant. Pursuant to the Third Schedule the demised premises include the "window frames, glass in the windows". The First Schedule includes the following covenants by the tenant:

"6. Not to cut or maim alter or injure any part of the Building nor to alter amend or add to the Premises or any part thereof without the prior written consent of the Manager (such consent not to be unreasonably withheld).

9. At all times during the term hereby granted and in good and workmanlike manner well and substantially to keep clean maintain and repair the Premises ..."

7. By clause 7 and the Fourth Schedule of the leases the Manager covenants with the tenant to keep the Estate and Building other than the Flats properly repaired, to arrange buildings insurance and to undertake various other obligations. The tenant

is required to pay a service charge (reserved as rent but directed to be paid to the Manager not to the landlord), being 1/10th of the Manager's costs in complying with the covenants in the Fourth Schedule and of various other expenses set out in clause 10.

8. By clause 14 the tenant covenants to pay the landlord's costs incurred on any application by the tenant for a licence or consent in connection with the lease and for preparing any such licence or consent whether or not the same shall be taken by the tenant.
9. It is assumed that the leases for the remaining flats do not differ in any material respect.
10. The Tribunal was also provided with a copy of a lease dated 26 September 1997 between the original landlord and the Manager which demised to the Manager that part of the building and the estate which is not included in the individual flat leases. There is no provision in this lease which requires the landlord to consent to any alterations by the Manager to the land demised.

The Property

11. The Tribunal did not carry out an inspection but it is clear from the documentation supplied by the parties that Sandhills is a purpose-built three storey single block of 10 flats built circa 1996 with parking spaces and an outside communal area.

The Law

12. An administration charge is defined in paragraph 1 of Schedule 11 of the Act and includes an amount payable by a tenant of a dwelling which is payable directly or indirectly for or in connection with the grant of approvals under his lease, or applications for such approvals. Under paragraph 5 of Schedule 11 an application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable. If the amount of the charge is not specified in the lease, it is payable only to the extent that it is reasonable.

Evidence and Decision

13. Appre, on behalf of the Applicants, originally wrote to the landlord on 27 March 2012, requesting written permission to replace the existing timber windows with white uPVC windows. Having clarified the number and location of the windows concerned, Hurst replied to Appre on 19 April 2012 stating the charge for licences would be £275 per tenant plus £275 for the communal window. Cheques were requested before the individual licenses were prepared. By a further letter of 1 May 2012 the charge per tenant was reduced to £250. In none of this correspondence did either Appre or Hurst refer to the provisions of the leases.
13. In a letter to the Tribunal dated 21 May 2012 Appre explained that they manage the day to day running of Sandhills for Sandhills Residents Company Ltd (which is the Manager party to the leases). In this same letter Appre acknowledged that if the

Manager rather than the freeholder had to give consent to the windows "we only need to give ourselves the permission".

14. As set out in paragraph 3 above, by 18 July 2012 Hurst's position in relation to the application on behalf of the landlord was that the leases do not require that the landlord consent to or provide a written license for alterations such as replacement windows. In respect of the flats, alterations would require only the consent of the Manager. This position was reiterated in the Respondent's written representations, which also sought to establish the reasonableness of a charge of £275 per flat if the tenants still wanted the landlord's written consent despite this not being required by the lease.
15. It is indeed clear that there is no provision whatsoever in the leases requiring the landlord's consent or a license for alterations such as window replacement. It was therefore wholly unnecessary for Appre to have sought the landlord's permission for the replacement of the windows in the first place, or for any formal licence to be prepared. Hurst, on behalf of the landlord, either did not realise this when they initially informed Appre of the charge that would be made for licenses, or chose not to mention it until an application had been made to the Tribunal challenging the charge. On receiving Hurst's letter of 18 July 2012 it should have been clear to the Applicants that no longer was any charge in fact going to be made or demanded unless the Applicants chose to pursue the landlord for written consent. There was therefore no need for the application to the Tribunal to proceed further. However the application was not withdrawn.
16. There is no evidence that any tenant still wishes to obtain a licence from the landlord, for which he would have to pay. In those circumstances, no administration charge is now being demanded by the Respondent. If there is no extant administration charge, there is nothing in dispute, and the Tribunal has no jurisdiction to make a determination.

Chairman Elizabeth Morrison
E Morrison LLB JD

Dated: 19 September 2012