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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References:	**LON/00AN/OCE/2014/0068** **LON/00AN/LSC/2014/0356** **LON/00AN/LBC/2014/0051, 0052 & 0053**
Property:	**11 Woodstock Grove, W12 8LE**
Applicants:	**11 Woodstock Grove Freehold Limited (for enfranchisement application no: 0068)** **Dr Peter Stefan Bluemel (for all other applications)**
Respondents:	**Dr Peter Stefan Bluemel (for enfranchisement application no: 0068)** **Mr Edward and Mrs Jane Lovatt (Flat A)** **Ms Panagiota Livada (Flat C)** **Ms Kerry McCann (Flat E)** **(for all other applications)**
Representatives:	**Ms C Evans (Managing Agent) for Mr Bluemel** **Osbornes Solicitors and Ms K Grey (Counsel) for the enfranchisement company and Mr & Mrs Lovatt and Ms McCann**
Type of applications:	**Application for determination of terms of acquisition –s's.24& 33 Leasehold Reform, Housing and Urban Development Act 1993** **Application as to payability of a Service Charge – s.27A Landlord and Tenant Act 1985** **Application for determination as to breach of lease – s.168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal members:	**Mr M Martynski (Tribunal Judge)** **Mrs S Redmond BSc (Econ) MRICS** **Mr O Miller BSc**
Date and venue of hearing:	**18 & 19 September 2014**
Date of decision:	**27 October 2014**

DECISION

Decision summary

1. The price to be paid by 11 Woodstock Grove Freehold Limited to the Respondent in respect of the freehold interest in 11 Woodstock Grove ('the Building') is £30,903.

2. The demands dated 21 March 2014 for the following Service Charges are not payable by the leaseholders:-

   Flat A - £2,000
   Flat C - £1,000
   Flat E - £2,000

3. None of the leaseholders are in breach of their leases as alleged by Dr Bluemel.

4. No order for costs save an order (pursuant to section 20C Landlord and Tenant Act 1985) that none of the costs incurred, or to be incurred, by Dr Bluemel in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders.

Background

5. This decision concerns three applications. First, an application by the three leaseholders of the Building for a decision as to the price payable by them to acquire the freehold of the Building. Second an application from Dr Bluemel for a declaration that certain Service Charge demands are payable by the leaseholders. Third, another application from Dr Bluemel that each leaseholder is in breach of the terms of their lease.

6. The Building is a period terraced house converted into three flats. Flat A is on the lower ground floor and has the benefit of the use of the rear garden. Flat C is on the raised ground floor. Flat E is on the upper two floors.

7. Curiously, the Building is subject to six leases. There are the three leases for the flats. Each of those leases is for a period of 99 years from 29 September 1999.

8. There are then leases (each of 999 years) of:-

   - The lower ground floor store and front court yard (created 2002)
   - The area above the second floor roof (created 2003)
   - The area above the flat roof area above the two-storey rear extension (created 2005)

   The leases are between Dr Bluemel and Michael Thomas Bluemel. These leases were not registered with the Land Registry until very recently.

9. The Leaseholders' Claim Notice in respect of the freehold interest of the Building is dated 14 March 2014 and proposes a premium of £22,000 for that freehold interest and £100.00 for the garden and accessways.

10. Dr Bluemel's Counter-Notice is dated 13 January 2014. It admits the right of the leaseholders to acquire the freehold subject to two matters as follows:-
    a. a proposed premium for the Building of £60,000, and
    b. '*please note the three leases which are in the process of being registered at the Land Registry*' - these being the three leases referred to above

11. Directions were first given on the freehold enfranchisement claim on 3 April 2014. Those directions specified that the parties' valuers must have exchanged valuations and met to narrow the issues in dispute by 15 May 2014. Further directions were given in respect of all the applications on 22 July 2014, those directions gave a further deadline of 5 August 2014 for the exchange of expert valuation reports.

12. As at the date of the final hearing before us Dr Bluemel did not have a formal written valuation for the purposes of the enfranchisement claim nor did he call any expert evidence in respect of the claim.

13. Dr Bluemel did not attend the final hearing, he was represented at the hearing by his managing agent, Ms Evans.

14. Following the hearing the tribunal gave leave to both parties to make further written representations on the issue of the applicability of section 20 Landlord and Tenant Act 1985 to the Service Charges in question in the proceedings. This decision has been made after taking into consideration the representations made.

The inspection

15. We inspected the Building on 23 September 2014. Mr Lovatt and Ms McCann were in attendance to allow access to the Building and we obtained access to the front and rear of the Building and to the interior of all flats and the common parts. We found the Building and the flats as described in the report of Mr Andrew Cohen MRICS which was presented to the Tribunal on behalf of the leaseholders. We did not see that any development had taken place on any other similar house in the street beyond that undertaken to the Building[1].

Preliminary issues

Striking out/late service of documents/bundle

16. Dr Bluemel made an application in writing (which was repeated by Ms Evans at the outset of the hearing) for the leaseholders' Statement of Case (in respect of the Service Charge and Breach of Lease applications) to be struck out on the basis that the leaseholders had not complied with directions and had not

[1]That being the extension to the roof space at the rear to create the second floor to the upper flat.

properly served the Statement of Case on time[2]with the result that Dr Bluemel had an insufficient time to respond.

17. However, on the morning of the first day of the hearing before us, Ms Evans brought to the hearing a large bundle of documents upon which she proposed to rely. That bundle ran to some 341 pages. Ms Evans had not told the leaseholders that she was bringing her own bundle of documents and the bundle contained documents that the leaseholders claimed they had not seen before. Counsel on behalf of the leaseholders objected to this evidence being admitted.

18. Ms Evans said that she would concede Dr Bluemel's application to strike out the Leaseholders' Statement of Case if her bundle of documents brought to the hearing that morning could be considered in the hearing.

19. We decided not to strike out the Leaseholders' Statement of Case and to allow Ms Evan's bundle of documents to be referred to in evidence. We considered that even if the Leaseholders' Statement of Case had not been received by Dr Bleumel until 8 September, it was not of such a length or complexity that he would not have had time to consider it. After having looked at Ms Evan's bundle, it appeared that there were in fact relatively few documents in there which the Leaseholders had not already seen. In any event, as the hearing finished early on the first day, the leaseholders and the tribunal spent the remainder of the day considering Ms Evan's bundle and, in the case of the leaseholders, Counsel was able to take their instructions on the documents in that bundle.

Valuation evidence

20. At the final hearing, it was said by Ms Evans, supported by a witness statement from Dr Bleumel (dated 1 August 2014) that Dr Bluemel had not been afforded a sufficient opportunity to inspect the Building and the flats in it so as to be able to carry out a valuation for the purposes of the enfranchisement claim. Accordingly, Dr Bluemel had not been able to prepare any kind of valuation report. Dr Bluemel therefore sought an adjournment of the enfranchisement claim. That application was opposed.

21. Dr Bluemel had at an earlier stage in proceedings instructed a firm of solicitors, HPLP. In a letter from that firm to the leaseholders' solicitors, Comptons, dated 17 April 2014 they said as follows:-

> On another matter our clients' valuer requires access to the premises to carry out a valuation and in accordance with the provisions of Section 17 of the Act we hereby give you Notice that access will be required to all three residential flats, namely flats A, C and E 11 Woodstock Grove London W12 8LE at 11.00am on 30 April 2014. Pease confirm that access will be provided on this date.

22. We heard oral evidence from two of the leaseholders, Mr Lovatt and Ms McCann as to this request for access. Mr Lovatt said that a valuer by the name

[2]Dr Bluemel stated that the Statement of Case had not been received until 8 September – disputed by the Leaseholders.

of Mr Bennett attended at his flat on 30 April. Mr Bennett told him that he was representing the managing agent. He spent 15/20 minutes looking round the flat and the garden. Mr Lovatt said that his understanding of this visit was that Mr Bennett was undertaking a valuation. Mr Lovatt added that as far as he was aware, Mr Bennett then continued to inspect the rest of the Building and the other flats that day.

23. Ms McCann stated that she had contacted her tenants regarding the inspection on 30 April. Her tenant had sent her a text confirming that access had been given on that day, the text read; "surveyor turned up – all good".

24. Mr Cohen (the leaseholders' Valuer) then gave oral evidence. He said that he had got a telephone call from Mr Bennett regarding the matter. Mr Bennett went though with Mr Cohen the various issues of valuation relevant to this case. Given that Mr Bennett was able to go through and discuss all the relevant issues in the valuation, Mr Cohen had assumed that Mr Bennett had inspected the Building and that he had been able to carry out a valuation. They had, according to Mr Cohen, come to some sort of consensus on a figure for the freehold to be acquired by the leaseholders. Mr Cohen added that Mr Bennett had sent him an email on 6 July 2014 noting that they had not spoken since before valuations were exchanged (Mr Cohen could not recall having actually exchanged valuations in writing). At some point later, Mr Bennett informed Mr Cohen that he had been dis-instructed.

25. According to Dr Bluemel's witness statement and the evidence given by Ms Evans, no proper valuation had been done for Dr Bluemel. The most investigation that had been carried out was an 'appraisal'. Mr Bennett had not been asked to produce a valuation report. Ms Evans said that she had contacted other valuers in an attempt to reduce the cost. She had found a Mr Lee who was cheaper and he could inspect the building on 9 May 2014. Access was not however given by the Leaseholders on this day.

26. We considered the issue after we had heard the evidence summarised above. We came to the conclusion that Dr Bluemel had been given sufficient opportunity to carry out a full inspection on 30 April and we concluded that Mr Bennett had in fact carried out such an inspection that had enabled him to carry out a valuation. We were not satisfied that any further inspection was necessary, even if it were, we were not satisfied that access had not been given by the leaseholders in May 2014[3]. We did not consider that Dr Bluemel had made any further serious attempt to obtain expert valuation evidence. In the circumstances we were not prepared to adjourn the hearing to allow Dr Bluemel to obtain any further evidence.

The enfranchisement Claim

27. We considered Mr Cohen's written report and he gave oral evidence to the tribunal in respect of his valuation. Mr Cohen was subject to cross-examination from Ms Evans.

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[3]We deal with the issue of the May inspections in much more detail later in this decision when discussing the alleged breach of leases

28. As to the various elements of Mr Cohen's valuation, we comment as follows:-

Capitalisation Rate:

29. We agree with the figure of 7% and agree with Mr Cohen's reasoning for settling on this figure set out in his report.

Deferment Rate:

30. We agree with the figure of 5% and agree with Mr Cohen's reasoning for settling on this figure set out in his report.

Value of the flats on a freehold basis

31. To arrive at his values for the flats, Mr Cohen relied on the analysis of sales of comparable flats (all bar one in the same road). We considered this analysis to be sound and the comparables to be very useful.

32. The only point on which we disagree with Mr Cohen is to the value of the first floor flat. This is a very small one-bedroomed flat (just 322 sq. ft or approximately 30 m.sq). Mr Cohen valued this flat at £322,000 using a base value of £1,000 p.s.f. His comparables for this flat were numbers 4 and 7 in the same road and 20 Richmond Road. Although in his report the flat at number 7 was described as a ground floor flat, from the picture with the particulars for this flat, it appeared to be in exactly the same style of building as the subject building and appeared to be a raised ground floor flat. Even if it is a ground floor flat, the most striking feature of this flat is that it is also very small at 340 sq.ft (approximately 31.5 m.sq). The other two comparables are 550 and 702 sq.ft respectively. The psf value of the flat in number 7 was £1,164, the values for the other flats were much smaller.

33. In our view, once one arrives at the very small end of the scale for one-bedroomed flats, the psf value tends to remain high and is no longer in relation to the size of the flat; i.e. a one-bedroomed flat that can feasibly be described as such will have a point where its value no longer decreases in relation to its square footage. We consider therefore that the better value to ascribe to Flat C in this case is based on a psf value of £1,164, this produces a figure of £374,800.

34. The only other difference in our valuation from Mr Cohen's is that we have used the stated square footage of 737 as opposed to 735 for the top floor flat to match the comparable relied upon by Mr Cohen at number 21 in the same street.

35. As to Dr Bluemel's case on valuation, of course he had no report to rely upon. The points raised by Ms Evans in the hearing were that, first, she considered flat 11a to have a value of £500,000. We reject this figure as Ms Evans had no evidence to support it. Second, she stated that the eventual premium payable by the leaseholders for the freehold interest should be no less than £40,000. Again we reject this figure as Ms Evans had no evidence to support it.

Valuation of rental income

36. Mr Cohen's valuation took account of the income due from the three additional leases of various areas around the building. It is difficult to see the point of these leases. There was no suggestion from Dr Bluemel that there would be any development value in the leases. Each lease reserved a ground rent which was valued by Mr Cohen and which of course was factored into his final figure for the freehold.

Our valuation

37. Accordingly we find that the price payable for the freehold interest in the building is £30,903. Our valuation is attached to this decision.

Transfer

38. As to the transfer for the freehold we were satisfied that this has been agreed. We were shown a letter from Dr Bluemel's solicitors to the leaseholders' solicitors enclosing a proposed draft transfer and a letter from the leaseholders' solicitors in reply (dated 28 April 2014) approving that transfer save as to the price payable for the freehold interest.

Service Charges

39. Dr Bluemel's application relates to Service Charges on account of proposed major roof works. Those Service Charges were demanded from each leaseholder in a written demand dated 14 March 2014. There was no dispute that this demand had been received by the leaseholders.

40. The demand to each leaseholder is in identical form, the only difference being the sums demanded which were:-

Flat A - £2,000
Flat C - £1,000
Flat E - £2,000

41. The demands are on the headed notepaper of Goldline Limited, who are Dr Bluemel's managing agents and by whom Ms Evans is employed. At the top of the demand is written; "GOLDLINE LTD.".
Immediately below this is an address as follows;

c/o Flat 7
22 Nottinghill Gate
London W11 3JE
Tel/Fax: 07092872972
e-mail: goldline_ltd"fmail.co.uk

The demand asks for cheques to be sent to Dr Bluemel care of the address for a solicitors firm in Birkenhead.

42. The leaseholders' leases are in the same form so far as payment of Service Charges are concerned. The relevant provisions are as follows:-

AND the Lessee HEREBY COVENANTS with the Lessor in manner following that is to say:-

.....

(vi)

(a) Pay in advance by equal half yearly instalments to be paid on the 25th day of March and the 29th day of September in each year during the term hereby granted a rateable proportion (hereinafter called the "maintenance charge") of the estimated costs and outgoings incurred by the Lessor in any year or part of a year in carrying out his obligations herein. The liability in respect of such expenditure (to be certified in accordance with sub-clause (b) and (c) of this sub–clause) shall be determined from time to time by the lessors Surveyor or Managing Agents whose decision shall be final and binding on the parties the first payment shall be a proportionate part of a half year and shall be made on or before the execution of these presents the next half yearly payment shall be on the 25th day of March next and each such half yearly payment or parts of such half yearly payment as aforesaid shall be recoverable by action brought by the Lessor against the lessee

(b) From time to time the Lessors Surveyor or Managing Agents shall certify in writing the maintenance charge to be paid by the lessee such maintenance charge shall be the lessors Surveyors or Managing Agents estimates of the expenditure to be incurred by the Lessor in carrying out its obligations herein If the expenditure incurred by the Lessor in any accounting period of 12 months in carrying out its obligations herein (hereinafter called "the annual cost") exceeds the aggregate amount payable(or deemed to be payable) by the lessees of all the flats in the building in the accounting period in question (hereinafter called "the annual contribution") together with any unexpected surplus as hereinafter mentioned and a certificate of the amount by which the annual cost exceeds the annual contribution and any such unexpended surplus shall be served on the Lessor or its agents and then the Lessee shall pay to the Lessor within 14 days of the service of such certificates a proportionate part (being the same proportion as set out in sub–clause(a) above and hereinafter called "the excess contribution") of the amount of such excess shown therein and the excess contribution shall be recoverable from the Lessee in case of default by action brought by the Lessor

(c) In calculating the maintenance charge the Lessors Surveyors or Managing Agents shall be entitled to make such provision as he or they consider reasonably necessary for reserves to be applied in or towards the annual cost in the next succeeding or any subsequent accounting period or periods

(d) For the purpose of this sub-clause the said accounting period shall mean a period commencing on the 25th day of March in any year and ending the 20th day of March in the following year.

43. In the bundle brought to the hearing by Ms Evans, there were copies of three consultation notices[4] regarding the major roof works. These notices are dated 21 March, 28 April and 18 June 2014. The first notice describes the works and gives the reason for carrying them out. The second notice gives details of the estimates received for the proposed works. The third notice confirms that a contractor to carry out the works has been chosen and gives the reason for that choice.

44. The leaseholders contended that they were not liable to pay the demands for payment on account in respect of the major roof works for three reasons as follows.

[4]In accordance the provisions of section 20 Landlord and Tenant Act 1985 and theService Charges (Consultation Requirements) (England) Regulations 2003

Charges not demanded in accordance with the terms of the lease

45. The leaseholders argued that, as the demands in question were dated 14 March 2014 and as they were for a specific sum in respect of major works, they were not demanded as provided for in the lease and so were not payable.

46. We disagree with the leaseholders on this point. The lease provides that the leaseholder must; "Pay in advance by equal half yearly instalments to be paid on the Twenty-fifth day of March and the Twenty-ninth day of September in each year ..... a rateable proportion .....of the estimated costs and outgoings incurred by the Lessor in any year or *part of a year*[our emphasis] .....". The costs therefore to which the leaseholders must contribute need not be the landlord's costs of the *whole* year.

47. The lease goes on to provide; "The liability in respect of such expenditure (to be certified in accordance with sub-clause (b) and (c) of this sub-clause) shall be determined from time to time by the Lessor's Surveyor or Managing Agents ....."

48. Sub-clause (b) deals with the detail of the landlord's certification of the estimate of the expenditure. There is no time set for the certification. There is no obligation on the landlord to provide the certification in advance of the demand.

49. In our view therefore, the landlord may demand a payment on account from the leaseholder in respect of the landlord's estimated expenditure for only part of the year. Further, the lease does not oblige the landlord to provide a written certification of that estimate prior to the demand.

50. Accordingly a demand in writing dated 14 March, is a valid demand for a payment on account which, under the terms of the lease, is due on 25 March.

Section 20 Landlord and Tenant Act 1985 consultation

51. In their Statement of Case, the leaseholders alleged that as Dr Bluemel had not complied with his statutory consultation obligations in respect of the works, the sums in question were not payable.

52. The consultation notices referred to above and produced by Ms Evans at the hearing appear to comply with the requirements of the relevant regulations.

53. Mr Lovatt and Ms McCann in their oral evidence to us denied ever receiving the first two notices. Mr Lovatt said that he had received the third notice, Ms McCann said that she had not.

54. There was no evidence in respect of service of the consultation notices in the documents provided by Ms Evans. In her oral evidence to the tribunal Ms Evans was not able to directly confirm that the first two notices had been served. In respect of these notices she said that they were prepared by the company Goldline, not by her. She said that she had been told by Goldline that the notices had been served. Upon being asked who at Goldline told her,

she replied that it was a man called 'Andrew'. He, she said, was one of the directors of Goldline and worked between Nigeria and Germany. She said she was told by Andrew that the notices were delivered to the door of each flat.

55. Given that receipt of various of the notices were denied by two of the leaseholders, it was incumbent upon Dr Bluemel to provide evidence of the manner in which and the date on which the notices had been served upon the leaseholders. We do not consider that we were provided with any such evidence upon which we could safely rely. Ms Evans only gave the evidence set out above on being prompted by the tribunal and was vague throughout.

56. Accordingly Dr Bluemel is not able to demonstrate that he has complied with the consultation regulations inasmuch as he cannot demonstrate that the first two notices were served on *any* leaseholder.

57. We are of the view however that section 20 of the 1985 Act does not apply to payments on account of costs yet to be incurred by a landlord. The relevant parts of Section 20 provide as follows:-

> (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
>
> (a) complied with in relation to the works or agreement, or
>
> (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
>
> (2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

58. In section 20, 'relevant contributions' are defined as contributions to costs *incurred on the carrying out of works*. This appears not to include payments on account of costs yet to be incurred and works yet to be carried out.

59. Counsel for the leaseholders in her written submissions argued that if section 20 did not apply, a landlord could simply avoid ever consulting leaseholders by only claiming payments on account. This however would not work in our view. Either the work in respect of which the payment on account was demanded would be carried out, at that point section 20 would bite and the leaseholder could demand repayment of all but £250.00. Alternatively, if the works were not carried out, a leaseholder could demand repayment on the basis that the demand for the payment on account was not reasonable as the work had not been carried out.

60. In the alternative, Counsel for the leaseholders argued that the sums requested on account were not reasonable (save presumably for the sum of £250.00 per leaseholder) because those sums would not ultimately be payable (save for the £250) because the consultation requirements were not followed. It seems to us that there are two problems with this argument. First, of course it would be open to the landlord, even if he has not complied with the

consultation regulations, to make an application pursuant to section 20ZA of the 1985 Act for dispensation from compliance with those regulations. If such an application were successful, the full amounts would be payable. Second, in order to determine the reasonableness of the sums demanded in the way suggested by Counsel would require a tribunal to guess what was going to happen in the future. It may be for example that the landlord, instead of making an application pursuant to section 20ZA, would simply decide to go through a fresh consultation process.

Section 47 Landlord and Tenant Act 1987

61. The leaseholders argued that in any event, the demands dated 14 March from Dr Bluemel did not comply with the requirements of Section 47 Landlord and Tenant Act and that accordingly for that reason, the sums demanded are not payable. The only address given in the demand letter is;

c/o Flat 7
22 Nottinghill Gate

62. Section 47of the Landlord and Tenant Act 1987 provides as follows:-

> **Landlord's name and address to be contained in demands for rent etc.**
>
> (1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
> (a) the name and address of the landlord, and
> (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
> (2)Where—
> (a) a tenant of any such premises is given such a demand, but
> (b) it does not contain any information required to be contained in it by virtue of subsection (1),then (subject to subsection (3)) any part of the amount demanded which consists of a service charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
> (3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges from the tenant.
> (4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

63. We were referred to the Upper Tribunal's decision in *Beitov Properties v Martin* [2012] UKUT 133 (LC). In that case it was common ground that the address given in the demand notice in question was the address of the landlord's managing agent. The tribunal found that the provision of this address did not satisfy section 47 and commented as follows:-

> .....It is, however, to be noted that section 48 makes separate provision for "Notification by landlord of address for service of notices" (as the section is headed), so that that provision carries the implication that the requirement in section 47 is not solely for the purpose of providing the tenant with an address at or through which he can communicate with the landlord but has a wider purpose. For this reason the provisions of the Companies Act 2006, relied on by the appellant, are of no assistance because they are concerned with the service of documents or other information. [paragraph 10]

> The address of the landlord for the purpose of section 47(1) thus seems to me to be the place where the landlord is to be found. In the case of an individual this would be his place of residence or the place from which he carries on business. In the case of a company it would be the company's registered office or the place from which it carries on business. If there is more than one place of residence or place from which business is carried on, then, depending on the facts, it may be that any one of such addresses will do. [paragraph 11]

64. According to Ms Evans, the address on the demand from Goldline is a business service address and one which Dr Bluemel uses legitimately to conduct his business. That therefore is the place where he conducts his business. As this business address is given on the demand, section 47 is satisfied.

65. In our view there are three problems with this argument. First, nowhere in the demand does it suggest that the address of c/o Flat 7, 22 Nottinghill Gate is Dr Bluemel's address. Second, whilst 22 Nottinghill Gate may be a business address service, Flat 7, 22 Nottinghill Gate is not. There was no explanation as to what Flat 7 is supposed to be.

66. Third, even if we ignore the issue that the demand specifies Flat 7, we do not consider that we have any proper evidence that 22 Nottinghill Gate is Dr Bluemel's place of business and a place where he can be found. The address is simply a business service address. The address can be used by an individual or business as an address to which letters/correspondence can be sent addressed to the individual or business and from where those letters/correspondence can be collected or forwarded. The company that runs this business address service (MBE – Mailboxes Etc.) provide other services such as photocopying, printing and packing. The company makes it clear that it provides a *virtual* office. There is no evidence that businesses or individuals can physically run a business from the address nor did we have any evidence that Dr Bluemel was actually ever present at that address. Accordingly the test set out in paragraph 11 of *Beitov* is not met.

67. Before reaching our conclusion on this issue, we note that the Upper Tribunal's reasoning in *Beitov* does not seem to take into account, what must be a not uncommon situation, where a landlord has no physical presence in England and Wales. Such a landlord who is an individual could never therefore provide an address in England and Wales at which he could be 'found' and would therefore have now way of complying with section 47 - this cannot be right.

68. We have not however troubled ourselves with this any further as no evidence was provided to us to suggest that Dr Bluemel could not comply with section 47 in the manner required by the tribunal in *Beitov* (and of course we have found in any event that there are other issues with the notice and section 47 as set out above). Accordingly we find that the demand did not comply with section 47 and therefore the sums demanded in the notices in question are not currently payable for this reason.

Breach of lease

Mr & Mrs Lovatt

69. The leaseholders' leases all contain a clause obliging them to give access to their flats, the relevant part of which reads as follows:-

> (viii) to permit the Lessor all its agents at all reasonable times during the said term with or without workmen or others to enter the demised premises and examine the state of repair and condition thereof .....

70. Dr Bluemel alleged that Mr & Mrs Lovett were in breach of their lease for failing to give access to their flat on 9 & 12 May 2014 having been requested to do so.

71. Ms Evans produced a letter dated 29 April 2014 from Goldline which stated:-

> The managing agent Ms Evans will be inspecting the property 11 Woodstock Grove on 9th May 2014 at 12.00 noon and 12th May 2014 at 12 noon and therefore needs access to the flats 11A, 11C and 11E .....

There was no evidence as to how this letter was served.

72. Ms Evans produced an email dated 2 May 2014 from Dr Bluemel's solicitors to the leaseholders' solicitors which attached, what it said, was a letter from Dr Bluemel's managing agents requesting access. It was contended by Ms Evans that the letter attached to the email was the letter referred to above dated 29 April.

73. In his oral evidence Mr Lovatt said that he had not got the letter requesting access directly and had not been informed by his solicitors that access was required on those dates. The first time that he saw this letter was when it was attached to another email on 27 May. He stated that had he seen the letter he would have given access as he had on other occasions.

74. Given Mr Lovatt's assertion that he had not got the letter requesting access and given that there is no evidence as to the service of that letter directly on Mr Lovatt or his address (other than via his solicitors), we are not satisfied that any request for access was made of him and accordingly there was no breach of the lease on his part as alleged.

Ms Livada

75. Exactly the same breach of lease was alleged in respect of Ms Livada as was alleged in respect of Mr & Mrs Lovatt.

76. Ms Evans gave evidence that she went to Ms Livada's flat on 9 May 2014 and met Ms Livada's tenant there. Ms Evans asked the tenant if she had been told to expect her. The tenant told her that Ms Livada had not given her any notice of Ms Evan's proposed inspection. Ms Evans, with the tenant's consent, gained access to the flat and was able to inspect what was said to be a damp patch. Ms Evans said that she had gone to the flat in order to inspect for disrepair

and for the purpose of inspecting generally and for a 'second valuation'. She said that she was not able to properly achieve her inspection aims on this visit.

77. We do not find that there was any breach as alleged for two reasons. First, there was no evidence that Ms Livada had been properly given notice of the inspection (other than the notice to her solicitors, as described above, which was not sufficient notice in our view). Second, Ms Evans in any event obtained access as requested on 9 May. She gave no clear reason why she felt that she was unable to achieve her stated aims of the inspection on that day. Ms Evans did not give any evidence as to any subsequent attempt to gain access on 12 May.

Ms McCann – Access 9 & 12 May

78. Again the same breach was alleged regarding Ms McCann. In her oral evidence Ms McCann said that she had not got the letter requesting access directly and had not been informed by her solicitors that access was required on the dates in question.

79. Given Ms McCann's assertion that she had not got the letter requesting access and given that there is no evidence as to the service of that letter directly on her or her address (other than via his solicitors), we are not satisfied that any request for access was made of her and accordingly there was no breach of the lease on her part as alleged.

Ms McCann – Access 24 March – 7 April 2014

80. Dr Bluemel further alleged against Ms McCann that she failed to give access to her flat between 24 March 2014 and 7 April 2014. The only notice that such access was required (at least shown to us – Ms Evans said that there had been another request but was unable to give any further detail or produce any other document) was a P.S. at the bottom of the 14 March Service Charge demand letter from Goldline discussed above. That P.S. reads:-

> We would like to remind you again that we require access between 24/3/14 and 7/4/14 into the following named property 11e Woodstock Grove London W12 8LE

81. In response to this request, Ms McCann sent an email on 21 March 2014 to Goldline as follows:-

> We are seeking advice from our solicitors who will revert to you in due course.
>
> In the meantime please confirm why you require access to flat E for two weeks at such short notice. You previously confirmed any works to the roof would not take place via a small bathroom window which other contractors confirmed is unsafe. I trust this is not an attempt to further harass me.

82. Ms Evans emails in response on 25 March, the relevant parts of that email read as follows:-

> The freeholder and their agents are entitled to seek access to enter a property for the purpose of inspections maintenance or repair as long as notice is given as defined in your Lease. It is untrue that you have not been given enough notice as you were

> aware that building work was to be carried out at 11 Woodstock Grove after the leak in to the rear room of the second floor of 11 Woodstock Grove.
> The cause of damage to the roof was attributed to substandard work carried out by builders employed by yourself without the Freeholder's or their agent's prior knowledge and consent.
> We do not understand why the process of builders requiring access into the flats to carry out work at the building should be termed as harassment.

83. The matter then stopped there. No further attempt was made to gain access. Ms Evans conceded that builders had previously gained access to Ms McCann's flat in order to inspect the issue of the leaking roof earlier in March 2014. Ms Evans said that no further attempt was made at gaining access due to the allegation of harassment made in Ms McCann's email of 21 March.

84. We do not consider that there has been any breach by Ms McCann of the terms of her lease in respect of this matter. It is implied into any term allowing the landlord access in a residential lease that the access must be reasonable access. A request for unspecified access over a period of two weeks is quite plainly not reasonable. Ms McCann was not given any proper clarification when she queried the request for access. Accordingly, no proper request for access was made and therefore there can be no breach of the obligation in the lease to allow access.

Ms McCann – Repairs to the roof

85. In Dr Bluemel's application he alleged a breach of clause (xiv) of the lease by which the tenant was not to:-

> ...do or permit any waste spoil or destruction to or upon the demised premises nor to do or permit any act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessor or it's tenants or the tenants or occupiers of the adjoining premises:-

86. The application alleged that Ms McCann had carried out repairs to the roof (which remained in the landlord's ownership and control) that were substandard and which were not authorised by the landlord. Dr Bluemel further alleged that the works carried out by Ms McCann had caused damage to the structure.

87. Ms Evans relied upon some photographs of the roof which she said showed the work carried out by Ms McCann. We were not able to draw any conclusions from those photographs. Ms Evans said that she had been told by her builders that the works were sub-standard. She further said that Ms McCann had told her that she had undertaken works to the roof.

88. In her oral evidence, Ms McCann said that she had never undertaken work to the roof. She had been experiencing a leak into her flat from the roof and had been complaining about this since 2012. The most that she had done was to allow the landlord's builders access to the roof.

89. We do not consider that there is any evidence that we could rely upon that Ms McCann had ever undertaken work to the roof and accordingly there has been no breach of the lease as alleged.

Ms McCann – Failure to repair and maintain

90. In Dr Bluemel's application he further alleged a breach of clause (v) of the lease by which the tenant was to:-

> From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and keep the demised premises and all new buildings which may at any time during the said term be erected and all additions made to the demised premises and the fixtures therein and all party and other wall fences roof footings joists sewers drains pathways passageways easements and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever.

91. Dr Bluemel alleged that Ms McCann was in breach of this part of the lease because; '*she failed to maintain and clean drains and sanitary installations (Sani-Flo toilet), so that a leak occurred which caused a nuisance and health hazard to tenants of adjoining flat.*'

92. There was no dispute that there had been a leak from/around the Sani-Flo toilet in Ms McCann's flat to the flat below. According to Ms McCann, in October 2013 the tenant in the flat below knocked on her door one evening to report that there was a leak into his flat. Ms McCann sent a text to Ms Evans to report the leak. She then called out a contractor and turned off the water supply. The contractor came out about an hour later. He reported that the toilet was not broken. A week or so later there was a drip, the contractor came out again and found that there was a loose bearing on the stopcock. The loose bearing was replaced and that was the end of the matter.

93. There was no evidence whatsoever that the leak in Ms McCann's flat was caused by any failure on her part to repair or maintain the installations in her flat. Ms Evans was not able to suggest what maintenance Ms McCann was supposed to have carried out to prevent any leak. Accordingly we again find that there is no breach as alleged by Dr Bluemel.

Ms McCann - Insurance

94. Dr Bluemel's application contained a further allegation of a breach of the lease, this time clause (v) of the landlord's obligations in the lease. This clause sets out the landlord's obligation to insure the building. We do not set out the details of the alleged breach or the detail of the reply from Ms McCann for the simple reason that Ms McCann cannot be in breach of the landlord's obligation to insure.

95. For the sake of completeness we will add that even if Dr Bluemel had relied upon a breach of a clause of the lease dealing with the tenant's obligation not to interfere with the landlord's insurance, there was no evidence presented to us that would have led to a finding of a breach of that nature.

Costs

Dr Bluemel's costs

96. Ms Evans made an application that the leaseholders pay to Dr Bluemel the fees that he had paid to the tribunal to make the applications in respect of Service Charges and alleged breach of lease. She made a further application that the leaseholders pay managing agent's and solicitor's costs incurred by Dr Bluemel in the total sum of £4,300.

97. As none of Dr Bluemel's applications were successful, it follows that there is no reason for us to order the leaseholders to pay costs of any kind to him.

The leaseholders' costs

98. Counsel for the leaseholders made an application for the payment of legal costs incurred by the leaseholders in the sum of £6,648.00 on the grounds that Dr Bluemel had behaved unreasonably in that;
    (a) he had not complied with directions in the enfranchisement application by failing to obtain and exchange valuation evidence
    (b) he contested the enfranchisement proceedings when he had no real case on the question of the premium payable
    (c) he had no real grounds for the service charge and breach of lease applications
    (d) the alleged breaches of lease only being minor
    (e) Ms Evans brought a large bundle of documents to the hearing without agreement of or warning to the leaseholders
    (f) he had pursued separate County Court claims in respect of possession proceedings
    (g) he had served, vexatiously, section 146 notices upon leaseholders before obtaining a determination of a breach of lease from the tribunal
    (h) Ms Evans' multiple threats to call the police regarding the alleged behaviour of the leaseholders

99. We are not prepared to make a costs order. As to the enfranchisement proceedings, a party cannot be compelled to obtain expert evidence. A party is entitled to contest the issue of the premium to be paid and not rely on expert evidence.

100. The Service Charge application was not brought unreasonably. The application failed but it warranted careful consideration.

101. Whilst there was little evidence for some of the breach of lease allegations, some of the allegations caused the tribunal to consider the merits of the case carefully. We consider that Dr Bluemel and Ms Evans, mistakenly as it turned out, genuinely believed that there had been breaches by the leaseholders of their respective leases.

102. The fact that the alleged breaches were minor is neither here nor there. That would be a matter for the County Court if the tribunal found that there had

been breaches. The job of this tribunal is to establish if there had been a breach of a lease, not to judge the seriousness of the breach.

103. As to the bundle of documents brought to the hearing by Ms Evans, as it turned out, we were able to deal with these using natural breaks in the hearing and the hearing was not prolonged unduly by those extra documents.

104. So far as County Court proceedings and section 146 notices are concerned, these are things that have been pursued by Dr Bluemel outside of these proceedings and which do not concern this tribunal. In making a decision on costs, we have to consider the behaviour of a party in the proceedings before us, not behaviour outside of those proceedings.

105. As to the threats to call the police, we do not see how this had led to the wasting of any costs on the part of the leaseholders in these proceedings.

106. We have to bear in mind that this tribunal is generally a no-costs forum. Just because a party is not successful in an application does not lead to an award of costs to the successful party, even if we consider that the losing party had a weak case.

Section 20C Landlord and Tenant Act 1985

107. Counsel for the leaseholders asked the tribunal to make an order preventing Dr Bluemel from putting any of the costs that he has incurred in these proceedings on to the Service Charge.

108. Dr Bluemel has gained no advantage in these proceedings and his case on all matters has been dismissed. It would not therefore be just or fair if he were allowed to charge his costs to the Service Charge.

109. Accordingly we make an order that none of the costs incurred, or to be incurred, by Dr Bluemel in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders.

Mark Martynski, Tribunal Judge

27 October 2014

Leasehold Reform & Urban Development Act 1993
Valuation for Freehold Enfranchisement
11 A, C, E WOODSTOCK GROVE W12 8LE

Facts and matters determined:

Leases of flats each 99 years from 29/9/1999 expiring 28/9/2098
Ground rent £100 per annum rising to £300 per annum
Unexpired term approximately 84.9 years
LGF store - 999 year lease created 2002
Ground rent £100 rising to £300 per annum, unexpired term 987.38 years
Area over 2nd floor roof - 999 year lease created 2003
Ground rent £100 rising to £300 per annum, unexpired term 988.9 years
Area over rear extension roof - 999 year lease created 2005
Ground rent £100 rising to £300 per annum, unexpired term 990.55 years

Valuation date	5th November 2013
Capitalisation rate	7%
Deferment rate	5%
Other compensation	£100
Virtual freehold value of Flat A	£437,750
Virtual freehold value of Flat C	£374,800
Virtual freehold value of Flat E	£451,780

Marriage value calculation nil - leases have over 80 years unexpired
Reversion for additional leases is de minimis (nil)

Diminution in Value of Freeholder's interest

		£	£	£
Term:				
Present value of Freeholder's interest - Flats				
Ground rent £100		300		
YP 18.9 years @ 7%		10.3075	3,092	
Ground rent 3 flats @ £200		600		
YP 33 years @ 7%		12.7538		
deferred 18.9 years @ 7%		0.2785	2,131	
Ground rent 3 flats @ £100		900		
YP 33 years @ 7%		12.7538		
deferred 51.9 years @ 7%		0.0299	343	5,567
Reversion:				
Virtual freehold market value unimproved				
Flat A Deferred 84.9 years @ 5%	0.0159	437,750	6,954	
Flat C Deferred 84.9 years @ 5%	0.0159	374,800	5,954	
Flat E Deferred 84.9 years @ 5%	0.0159	451,780	7,177	20,085
Freeholder's present interest				25,652

LGF store and courtyard

Ground rent	100		
YP 23.41 years @ 7%	11.3546	1,135	
Ground rent	200		
YP 33 years @ 7%	12.7538		
deferred 23.41 years @ 7%	0.2052	523	
Ground rent	300		
YP 931 years @ 7%	14.2857		
deferred 55.41 years @ 7%	0.0235	101	1,760

Area over 2nd floor roof

Ground rent	100		
YP 23.92 years @ 7%	11.4540	1,145	
Ground rent	200		
YP 33 years @ 7%	12.7538		
deferred 23.92 years @ 7%	0.1982	506	
Ground rent	300		
YP 932 years @ 7%	14.2857		
deferred 56.92years @ 7%	0.0213	91	1,742

Area over rear extension roof

Ground rent	100		
YP 23.57 years @ 7%	11.3862	1,139	
Ground rent	200		
YP 33 years @ 7%	12.7538		
deferred 23.57 years @ 7%	0.2030	518	
Ground rent	300		
YP 934 years @ 7%	14.2857		
deferred 56.57 years @ 7%	0.0218	93	1,750
TOTAL PAYABLE			**£30,903**

Apportionment

Flat A	8,810 / 25,652	x	5,252	=	1,804	+	8,810	= £10,613
Flat C	7,810 / 25,652	x	5,252	=	1,599	+	7,810	= £9,408
Flat E	9,033 / 25,652	x	5,252	=	1,849	+	9,033	= £10,882
								£30,903