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REF LON 00BB/LSC/2009/0680

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION  
27A AND 20C

Address FLATS A TO H 366 GREEN STREET  
LONDON E13 9AP

Applicant Tradeleague Limited

Represented by Mr A Berger of Feldgate Limited  
managing agents

Respondent

Mr G Somogyi	Flat A
Mr A Gulam-Husein	Flat B
Mr A F Pabani	Flat C
Mr F Cobson	Flat D
Mountview Estates plc	Flat E
Mr Pradeep-Kumar	Flat F
Patel and Mrs Jaishree Patel	
Ms N B Boodhun	Flat G
Mr B Shah	Flat H

Represented by Mr A Gulam-Husein representing the  
lessees of Flats B and C  
Mr and Mrs Kumar Patel representing the  
lessees of Flat F

The Tribunal  
Mr P Leighton LLB (Hons)  
Mr P Roberts Dip Arch RIBA  
Mrs J Clark JP

Date of Hearing 4<sup>th</sup> March 2010

Date of Decision 1<sup>st</sup> April 2010

## **Introduction**

- 1 By an application dated 20<sup>th</sup> October 2009 the Applicant applied to the Tribunal for a determination in relation to service charges for major works to be carried out at 366 Green Street London E13 9AP("the block") under Section 27A of the Landlord and Tenant Act 1985
- 2 The original pre trial review was held on 17<sup>th</sup> November 2009 (Professor Driscoll) but was adjourned as the parties were not ready to proceed. The second pre trial review was held on 8<sup>th</sup> December 2009 (Ms Dickie) who gave directions for the conduct of the hearing. Mr Patel (Flat F) was present at that hearing but Mr Husein (Flat B) who had been present at the previous hearing of the first pre trial review was unable to attend. Mr A Berger of Feldgate Limited the managing agents of the property had represented the landlords at both the pre trial reviews and also appeared at the hearing. The application was listed for hearing on 4<sup>th</sup> March 2010 when it came before the Tribunal for hearing. Mr Kumar Patel had been assisted by Thiru and Co solicitors in the preparation of his witness statement served on 26<sup>th</sup> January 2010 but that firm did not appear at the hearing to represent him.

## **The Hearing**

- 3 At the hearing both Mr Husein and Mr Patel who again appeared themselves requested an adjournment of the proceedings on the ground that since the pre trial review in December 2009 they had been presented with a further section 20 notice on 17<sup>th</sup> February 2010 and that both of them had been out of the country when it was served and had not had time to deal with it . They further pointed out that the time for consultation in respect of this notice did not expire until 19<sup>th</sup> March so that it would be unreasonable for the Tribunal to determine the application before that time, particularly as they submitted that had had insufficient time to deal with it.

- 4 Mr Berger in reply pointed out that the notice in question was the second stage of the section 20 procedure in respect of the major works and that the first stage, (the notice of intention) had been served prior to the first pre trial review in November and all parties were aware of it. Indeed Alico Estates who were the managing agents of Flats B and C had written to the landlord on 1<sup>st</sup> December 2009 making representations pursuant to the Section 20 notice that the tenants should not be liable for the roof repairs on the grounds that the roof was damaged by the action of the landlord in installing a television mast on the roof. The second notice was merely the result of the tendering process which revealed that the lowest of three tenders for the works had been received by Cranescot builders in the sum of £96,921.25 and that the landlord proposed to accept that estimate.
- 5 The tenants stated that they wanted their surveyor, Mr Lomas of Updales, who had provided an earlier report, to examine the tender documents to see if they were correct and should be approved.
- 6 The Tribunal did not consider that the proceedings should be adjourned on such a late application and decided to proceed with the hearing but agreed that it would not complete the hearing on that day but adjourn to a date after 19<sup>th</sup> March to enable the examination of the tenders by the lessees' surveyor to take place and for the Respondents to call any evidence on that day if they were so minded
- 7 The Tribunal gave the parties the option of either continuing with the oral hearing on the adjourned date or simply submitting written representations and gave directions informing them that they must inform the Tribunal of their decision by no later than 16<sup>th</sup> March 2010 .
- 8 The Tribunal then proceeded to hear evidence and submissions relating to the rest of the case concerning the items in the major works specification which the Respondents challenged on the ground that they were unnecessary

- 9 In the event the Respondents decided not to call oral evidence at the adjourned hearing on 23<sup>rd</sup> March 2010 and the Tribunal proceeded to reach a decision on the basis of the evidence already submitted at the previous hearing. None of the parties chose to attend to make oral submissions and no further written submissions were received by the Tribunal.

### **The Property**

- 10 The property in question is a purpose built block of flats with 4 shops on the ground floor and 8 flats above. In the condition report of January 2009 prepared by Thomas Callum Associates Limited on behalf of the landlord the property is fully described and there are a number of photographs showing the condition of the premises at the time of the survey. As a result the Tribunal did not consider it necessary to inspect the property and it was not requested by the parties to do so.

### **The Leases**

- 11 Specimen leases of Flats B and E were submitted with the bundle of documents together with two commercial leases of the ground floor one for 366 and the other for 368 Green Street. . The lease for Flat B is more extensive and contains more clauses than that for Flat E but the clauses in Flat E are in similar terms to those in Flat B although less extensive.
- 12 The "maintenance contribution" is defined in Clause 1.13 of the lease as " a sum being a fair proportion attributed to the demised premises taking into account the commercial premises on the ground floor of the building such proportion to be one eighth of the costs and outgoings of the lessor during the relevant maintenance year in carrying out their obligations" under the lease
- 13 It was agreed between the parties that the contribution to the shared costs of the landlord in maintaining for example the roof should be on

the basis of one third to the commercial premises and two thirds to the flats above. Accordingly the lessees of the flats are required to contribute 1/8<sup>th</sup> of the total costs attributable to the flats and 1/8<sup>th</sup> of two thirds of the shared costs. This calculation is set out in detail on page 146 of the bundle.

- 14 The lessee's duty to contribute to the lessor's costs is set out in Clause 4 of the lease and the lessor's obligation to provide the services to the block and to carry out maintenance is set out in Clause 6 of the lease and the Fourth Schedule
- 15 The expenses of the lessors are set out in Schedule 4 Part II of the lease and include at paragraph 4 *"employment of full time or part time staff and paying all outgoing taxes and other expenses incurred in relation thereto and providing and supplying such other services for the benefit of the lessee and the other tenants in the building and carrying out such other repairs and such other improvement works and additions and defraying such other costs (including the modernisation of all replacement of plant and machinery) as the lessor shall in its discretion consider necessary to maintain the building or otherwise desirable in the general interests of the tenants "*
- 16 Clause 2 of the Fourth Schedule enables the landlord to employ a surveyor or an estate agent to manage the property and Clause 5 of the Schedule includes legal and other costs "in the running and management of the building and in the enforcement of the covenants conditions and regulations relating thereto contained in the leases granted of the flats in the building including the auditing of the accounts of the maintenance year "
- 17 Clause 10 of the Schedule requires the landlord to install and maintain an entry phone system within the building.

## The Facts

- 18 In January 2009 the landlord instructed Thomas Callum Associates Limited to carry out a condition survey of the block and they prepared a report and specification of works to be carried out.
- 19 As a result the landlord then served a section 20 notice on 4<sup>th</sup> February 2009 seeking observations from the leaseholders. The only observation received was from Mountview Estates (Flat E) who asked for a copy of the specification, which was sent to them by Feldgate the managing agents on 11<sup>th</sup> February but no comments were received from them.
- 20 Tenders were sent out to three builders in March 2009 for return by 30<sup>th</sup> April. The lowest tender was sent by Cranescot Builders as a result of which a second notice was sent out to leaseholders on 7<sup>th</sup> May advising them of the result of the tender process and informing them that the Cranescot tender would be accepted.
- 21 Two leaseholders wrote asking for copies of the specification and in June 2009 a surveyor from Updales wrote enquiring why the commercial leaseholders were not being charged for the works to the block as a whole. As a result the Applicant revised the apportionments between the leaseholders and the commercial tenants to require the tenants of the shops to contribute to certain shared costs including the roof works.
- 22 On 3<sup>rd</sup> August 2009 demands were sent out to all the leaseholders. Ms Boodhum of Flat G wrote in on 1<sup>st</sup> September 2009 requesting time to pay and an extension of 6 months was granted to her, but the landlord pointed out that they were under pressure to complete the works because the local authority had served an improvement notice under the Housing Act 2004..
- 23 A final notice was served on the Applicant on 3<sup>rd</sup> November 2009 as a result of which the landlords sent a further Section 20 notice on 24<sup>th</sup>

November 2009 in respect of a number of items of work which had not been included in the first notice.

- 24 Following that notice the representations from Alico Property services were received in which they suggested that damage to the roof had been caused by the mobile tower used by the Applicant at the time when the telephone mast had been installed. On the advice of its surveyor the Applicant rejected this view.
- 25 There was also a complaint from the leaseholders to the effect that the professional fees were excessive as they were being charged at a rate of 12% for surveyor's fees and 10% management fees. .
- 26 Following the service of the Applicant's statement of case, a witness statement was served from Mr Patel in which he complained about the state of the building, the frequent use of the stairways and corridors to the roof by drug dealers and prostitutes and the fact that the works had increased in amount and cost because of the historic neglect of the landlord. Many of these issues did not relate to the issue of service charges but raised questions of breach of covenant which would give rise to a claim for damages which were more appropriate to be dealt with in the county court
- 27 At no stage during the hearing was any evidence advanced to suggest that the works specified were not necessary and no evidence was advanced that the works could have been carried out by any other contractor more cheaply than Cransescot.

### **The Tribunal's Decision**

- 28 The Tribunal has examined the condition survey carried out by Thomas Callum Associates Limited, which considered that the works were necessary to comply with the improvement notice and to put the property in a reasonable state of repair.
- 29 The tenants have produced no evidence to suggest that the works specified by Callum were unreasonable save to argue that part of the

damage to the roof may have been caused by the placing of the telephone mast. The Tribunal has received no evidence to this effect from the lessees and the Applicant states that its surveyor says that the works are attributable to wear and tear.

30 In the absence of any evidence to support the contention that damage was caused to the roof by the landlord the Tribunal has no alternative but to hold that the state of the roof was subject to general wear and tear particularly having regard to the age of the building and the absence of any evidence of recent repair.

31 The Tribunal is satisfied that the landlord sent out the relevant notices under Section 20 and that they were received by the lessees. Apart from the observations made by Alico no other representations were made by the tenants and no alternative contractors were recommended by them

32 The work was put out to tender to three building contractors and the landlord has accepted the lowest tender submitted by Cranecot Builders No representations were received in respect of the second notice sent out in February 2010 with regard to the cost of the works and the Tribunal is therefore of the opinion that the costs likely to be incurred by the landlord in accepting the tender submitted by Cranecot is reasonable. The adjournment was granted to enable the tenants to make any criticism of the tender prices or the specification and they have not done so.

33 The Tribunal has considered the professional fees charged to the contract. Surveyor's fees of 12% are claimed and a management fee of 10%. This amounts to sums of 22% in addition to the costs of the building works.

34 The Tribunal considers this sum to be excessive and in particular the management fee of 10% in addition to the surveyor's fee. The Tribunal considers that reasonable fee for the management costs would be 5%.



Although the figure of 12% for the surveyor is on the high side it is not such as to be considered excessive and will be allowed.

- 35 Accordingly the Tribunal determines that the proposed costs of the works is reasonable save for the deduction of 5% from the management fee.

**Section 20C costs.**

- 36 It appears to the Tribunal that the costs of the landlord are likely to be recoverable under the terms of the lease Schedule 4 clause 5(1) (a) and having regard to the conclusion reached by the Tribunal it does not consider that there are any grounds for disallowing the costs in principle.
- 37 The Tribunal has considered the amount claimed by Mr Berger of Feldgate which amounts to £3974.16 in total. This includes £800 for the statement of case, £800 for preparing the bundle, and £600 for the two pre trial reviews .He has also charged 8 hours at £100 per hour for the hearing and the Tribunal takes into account that Mr Berger attended personally at the hearing and the two pre trial reviews as well as providing the additional information provided in answer to requests from the Tribunal. The total costs of £3974 therefore would result in a cost of approximately £500 per tenant The Tribunal considers that this is excessive and that a reasonable figure to allow for the costs would be £2000. In addition the Applicant is entitled in the view of the Tribunal to recover the fees to the Tribunal of £500 incurred by it .
- 38 In the circumstances the Tribunal will allow the Applicant's costs limited to £2000 to be added to the service charge account in respect of costs and a further sum of £500 in respect of fees

Chairman Peter Leighton  
Date 1<sup>st</sup> April 2010

