Eastern Rent Assessment Panel
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Residential Property
TRIBUNAL SERVICE

REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 27A and 20C

Premises:	6 and 8 Alexandra Court, East Street, St Ives, Cambs PE27 5FG
Our ref:	CAM/12UE/LIS/2005/0012
Hearing:	25 April 2006
Applicants:	Mrs J Bickmore (Flat 8) Mr & Mrs R B Ward (Flat 6)
Represented by:	Themselves
Respondent Landlord:	Alexandra Court (St Ives) Management Ltd (formerly Mallgain Property Management Limited
Represented by: - Managing Agents:	Homequest Letting & Management (Mrs S E King) Mr J A Mitchley FCA

Members of Tribunal: Mr G M Jones - Chairman
Miss M Krisko BSc (Est Man) FRICS
Mr R S Rehahn

LEASEHOLD VALUATION TRIBUNAL

6 and 8 Alexandra Court, East Street, St Ives, Cambs PE27 5FG
CAM/12UE/LIS/2005/0012

ORDER

(1) It is hereby ordered that the service charge accounts for Alexandra Court East Street St Ives Cambridgeshire shall be adjusted pursuant to the Decision herein as shown in the Second Schedule hereto.

(2) The parties have permission to apply to the Tribunal as regards implementation of this Order provided such application must be made within 8 weeks from the date of this Order.

(3) The Tribunal considering it just so to order the Respondent shall not be entitled to include in any service charge account relating to Alexandra Court any costs incurred in defending the Application herein PROVIDED THAT this clause shall not take effect for 15 days from the date hereof or until the final determination of the issue of costs (as the case may be).

(4) If within 14 days from the date hereof of Respondent shall file at the Tribunal Office and serve on the Applicants written submissions as to costs together with copies of all documentation to be relied upon, then Clause 3 of this Order shall not take effect unless confirmed by the Tribunal after consideration of representations by the parties and the Applicants shall have permission within 14 days thereafter to file at the Tribunal Office and serve upon the Respondent through its agents Homequest Letting & Management (Mrs S E King) written submissions in reply together with copies of all documentation to be relied upon.

(5) Unless either party by the said written submissions requests a hearing the Tribunal will determine the issue of costs without a further hearing.

Geraint M Jones MA LLM (Cantab)
Chairman
19 June 2006

0. BACKGROUND

The Property

0.1 The subject properties are flats in a block dating from the 1990's, which is built in textured yellow brickwork with a pitched tiled roof. The block comprises 8 flats on two floors plus two two-storey starter homes (Nos 9 & 10). The flats are reached by two entrance halls, each with a staircase. The Tribunal noted that the carpets were rather grubby. The starter homes and some of the flats overlook a small courtyard, mostly paved, but including a modest area of soil with a few small plants. This area appears unkempt. At the front of the block next to the public pavement there is a small unfenced area which could be cultivated, but in practice comprises mainly compacted bare earth. There was evidence of recent repairs to brickwork on the front elevation, using yellow bricks which, however, do not exactly match the original bricks. The windows and external doors are framed in softwood, which has been stained. On the front and side elevation are timbered areas associated with bay windows. The timber-work has obviously been decorated fairly recently, but is in poor condition in places. At the rear are a bin store and a car park with 10 spaces, one for each unit. The car park is reached by a private concrete roadway (not owned by the landlord) which leads also to the back of high street shop units.

0.2 The Tribunal inspected the interior of Flat 6, which comprises two modest double bedrooms, living room, kitchen/diner and bathroom. The entry bell system in this flat does not work.

The Lease

0.3 The sample lease (Flat 8) is for a term of 999 years from 25 December 1997 at a ground rent. The demised premises include the doors and window-frames of the flat; but the lessee is not responsible for external decorations. The lessee was allocated a share in the management company (then known as Mallgain Property Management Limited). The management company, which now owns the freehold, is responsible for buildings insurance; repairs to the main structure and common parts; external window cleaning and decorations; grounds maintenance; and cleaning of common parts, as set out in Schedule 7. The lessee is to contribute 1/10 of the company's costs. The service charge year is to commence on 1 April. There is provision for a reserve fund.

The Managing Agents

0.4 The directors of the management company are Mr R King and Mr A Slade, both of whom are flat owners. Most of the flats are not owner-occupied. The company employs as its managing agent Homequest Letting & Management, which is a trading name of Mrs King. The accounts have been verified by Mr Mitchley.

1. THE DISPUTE

1.1 The Applicants are concerned about aspects of the service charges for 2002 to 2006 inclusive. The items in dispute were listed in the application as follows: -

Gardening	£699.00
Gardening	£752.00
Cleaning	£1,172.00
Windows	£450.00
External decorations	£4,600.00

In view of their criticisms of the management of the disputed matters, the Applicants were also querying the estimated charges for 2005-6 and the management charges, set at £822 per annum for each relevant year.

2. THE ISSUES

2.1 The Applicants say that the block was built by Mallgain Builders Ltd, who were no longer interested in it once the last flat was sold. The company (in which they are or should be shareholders), has owned the freehold since 1999. There have been no general meetings except one EGM held on 17 November 2005 for the purpose of approving proposed service charges of £700.00 per unit for 2005-6. The gardening required is minimal and the sums paid to the garden contractor have been excessive. The cleaning of common parts was badly done and over-remunerated. Initially, the cleaning charges included windows; subsequently, the managing agents employed a separate window cleaner. The charges for window cleaning were excessive and unreasonable. The sums paid for cleaning of halls and stairways were not reduced.

2.2 In 2004 there was a severe vehicle impact on the front of the building. This was repaired by builder Paul Ellam at a cost of £3,825.00, which was covered by insurance. At the same time, Mr Ellam was asked to carry out external decorations at a cost of £4,286.20. This seemed an excessive sum, bearing in mind that the woodwork had been re-stained the previous year at a cost of £330.00. The work was carried out off ladders, and did not involve the use of scaffolding.

2.3 Meanwhile, cleaning and garden maintenance were suspended as of April 2004 owing to lack of funds. Mrs King was claiming that she was owed over £4,000. She proposed to recoup this sum by higher charges to be levied for 2005-6. The entire situation was very unsatisfactory.

3. THE EVIDENCE

3.1 It was at first difficult to understand what charges had, in fact, been rendered to lessees. However, Mr Mitchley was able to produce documentation showing the figures, which are shown in the First Schedule hereto. Mr Mitchley's evidence on this issue was unchallenged and the Tribunal accepts it. Mrs King told the Tribunal that she trades as a letting agent and manages about 400 properties let by her clients on assured shorthold terms. She undertook the management of this block only because her husband owned a flat there. She has no prior experience of managing a block of units let on long leases at a ground rent or of dealing with service charge accounts. She was unfamiliar with the provisions of the Landlord & Tenant Act 1985. In particular, she knew nothing of the consultation requirements of section 20 and had not undertaken any consultation exercise in relation to the external decorations. Moreover, she had never seen any of the leases and did not know what were the company's responsibilities under the leases. She simply assumed it was up to her to look after the block.

3.2 In those circumstances, she said she had done her best to manage the block in much the same way as she managed the other properties in her clients' portfolios. She accepted that the woodwork had been stained the previous year; but she said she had asked the decorator to keep his work to the bare minimum owing the lack of funds. Mr Ellam, who is a carpenter by trade, said the windows needed quite a bit of work. She knew him and trusted his honesty and

judgment. She did not inspect his work afterwards.

3.3 The invoices showed what work Mr Ellam had charged for. The second invoice included repairs to woodwork, described in the quotation dated 15 September 2004 as replacement of "all woodwork except the frames on 3 bay windows and numerous parts of fascia and soffits etc around the building which are rotten". Mrs King said she had spoken to Mr Ellam, who said he had carried out repairs on the first floor bay windows. The Applicants obtained a quotation from Mr Paul Ashmore, who offered to decorate the exterior for £2,850. He said it appeared that the woodwork had been "flash coated" i.e. stained and then varnished. This is a quick method of working, but not as satisfactory as applying two coats of Sadolin (which is what Mr Ellam had been asked to do). It is fair to say that Mr Ashmore was quoting for the work on the basis of the current condition of the woodwork, after Mr Ellam's repairs were complete.

3.4 Mrs King said that the cleaning contractor was known to her and she had had no complaints about the firm's work from any other tenants. Nobody would take on a job of this kind for less that £20.00 per week. Mrs Ward said she and Mrs Bickmore would have done it; the window cleaning charge was excessive, bearing in mind that only the common parts were cleaned.

3.5 Mrs King said that when funds were available, she would ask the gardening contractor to make a call. He last attended in January 2006. She had nothing to say about the reasonableness of the contractor's charges, except (by implication) that she considered his rates reasonable. It was apparent that she had no real idea what (if anything) he had actually done.

4. THE LAW

Service Charges

4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable is limited accordingly. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also 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 so, the amount which would be payable.

4.3 Under **section 20 of the 1985 Act** (as substituted by **section 151 of the Commonhold & Leasehold Reform Act 2002** with effect from 31 October 2003) and the **Service Charges (Consultation Requirements) (England) Regulations 2003** landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term

contracts. The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a designated public body for the purposes of statutory regulations dealing with public works, services and supplies.

4.4 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works. After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.5 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 per tenant or £100.00 p.a. per tenant (as the case may be). However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.6 Accordingly, **under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002)** the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Costs generally

4.7 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge.

4.8 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice. The Tribunal notes that particular care may be required in exercising this jurisdiction in cases where the tenants own the management company responsible for carrying out repairs etc. In such cases, it may be a futile gesture to make an order under section 20C, as the tenants (in their capacity as shareholders) may end up paying the disputed costs anyway.

4.9 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may (on the application of a party) order a party to reimburse the Applicant in respect of application and hearing fees.

5. CONCLUSIONS

5.1 Under the heading of repairs/renewals/decorations, the only disputed item at the hearing was Mr Ellam's second invoice (No 3000 of 10 January 2005) for £4,286.20. It is clear that the provisions of section 20 restrict recovery of costs under that invoice to a total of £2,500.00 (£250.00 per tenant). The Tribunal was satisfied that Mr Ellam had done decorative work to that value. It was impossible on the evidence to assess the true value of the repair work done. It is surprising that a building dating from as recently as 1997 should be in need of substantial woodwork repairs. On the evidence, it appears probable that the tenants were prejudiced by Mrs King's failure to consult them. It is clear that the failure to consult the tenants was the result of ignorance on the part of Mrs King, as she freely admitted.

5.2 The Tribunal accepts that Mrs King was doing her best to manage the block. In the judgment of the Tribunal, however, there is no reasonable excuse for a professional managing agent not to take the trouble to find out what are the management company's obligations under the relevant leases and what are the legal requirements associated with proper management. Mrs King had ready access to at least one of the leases. Information about the law and relevant management standards is readily available from Government web sites, from the RICS and other professional bodies. Accordingly, the Tribunal could think of no ground on which it would be just or reasonable to dispense with the requirements of section 20 by making an order under section 20ZA. We make it clear that, in our judgment, the fault lay with Mrs King and she should bear the consequences of it. However, the Tribunal has no power to make any order to that effect.

5.3 It appears from the First Schedule that the charges for window cleaning and maintenance (comprising the cleaning of common parts, including windows, escalated dramatically in year ending 31 March 2002. The Tribunal considered the charges under those heads from 1 April 2001 onwards. The cleaning of the common parts of this block is a small job likely to appeal to a local contractor with low overheads. All that is required is to vacuum the carpets regularly and occasionally shampoo or steam clean them; clean down bannisters and dust windowsills. The Tribunal considers that weekly cleaning would be reasonable and accepts that no contractor would be likely to undertake the work for less than £20.00 per week. The Tribunal takes the view on balance that the cleaning was probably done to a reasonable standard. Accordingly the Tribunal considers that an annual charge of £1,040.00 + VAT (£1,222.00 in all) would be reasonable. That is the sum claimed (and allowed) for 2001-2 and 2002-3. The actual charge for 2003-4 was only £1,172.00.

5.4 The lease requires the management company to clean the outside of all the windows in the block monthly. A charge of £75.00 would, in the judgment of the Tribunal, be reasonable for that task. However, for cleaning the windows in the common parts only (as the contractors have actually been asked to do), a reasonable charge would be £35.00. There is no complaint about the standard of the window cleaning. On that basis, the Tribunal allows £420.00 for 2004-5, the first year in which this task was separately contracted. No VAT was charged by the contractor. Thus the Tribunal allows a total of £1,642.00 for cleaning and window cleaning in 2004-5.

5.5 There were no charges for garden maintenance until year ending 31 March 2002. The Tribunal

considered the charges under that head from 1 April 2001 onwards. In the judgment of the Tribunal £14.00 per hour is a reasonable rate of charge for a contractor providing his own tools. There is not a great deal of gardening to do, nor has a great deal been done recently.

The Tribunal considers that a reasonable allowance for the necessary work would be 4 hrs per month in the summer season (16 hrs over, say, 4 months) and 2 hrs per month in spring and autumn (10 hours over, say, 5 months). There is no work a gardening contractor could reasonably do in the winter months. Thus the Tribunal allows a total of 26 hours a year plus, say £36.00 for plants, making a total of £400.00 per annum. On that basis, the Tribunal allows £400.00 for each of 2001-2, 2003-4 and 2004-5 and £396.00 (the actual cost) for 2002-3.

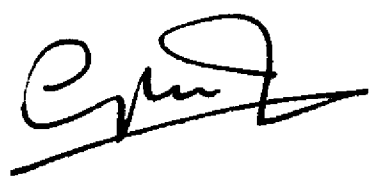
5.6 Management charges were first levied in year ending 31 March 2001. The Tribunal considered the charges from 1 April 2000 onwards. Although there were serious management deficiencies in relation to the external decorations contract, the standard of management overall has not been unreasonable. The Tribunal points out that managing agents cannot be expected to fund the debts of the management company; that situation will have to be resolved by the collection of sums towards the arrears. In future, it is to be hoped that the estimates of annual charges will be more accurate. The parties might like to consider whether it would not be good policy to build up a modest reserve fund to soften the blow of major items of expenditure which are bound to arise from time to time. Management of small blocks is not particularly attractive to managing agents, particularly since implementation of the amendments to the 1985 Act under the provisions of the Commonhold & Leasehold Reform Act 2002. In the judgment of the Tribunal, the management charges levide from 2000-1 onwards were reasonable, having regard to the standard of management services provided. The Tribunal anticipates that Mrs King will take on board the criticisms contained in this Decision, which will involve some extra work for her and her staff. The tenants must expect that management charges are likely to rise at a modest rate over the next year or two.

5.7 The adjustments the Tribunal makes to the annual service charge accounts is shown in the Second Schedule hereto. It is to be hoped that the actual balances owed by individual tenants can be readily agreed. If not, the parties shall have permission to apply to the Tribunal, provided they do so within 8 weeks from the date of this Decision.

Costs

5.8 Overall, on the information available to date, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the Respondent should be disentitled from treating its costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to Alexandra Court. This conclusion is subject to any relevant offers or other relevant correspondence the parties may submit to the Tribunal within 14 days from publication of this Decision. The Respondent shall have permission within the same period to submit written arguments in relation to costs.

Geraint M Jones MA LLM (Cantab)
Chairman
19 June 2006



ALEXANDRA COURT, ST IVES
CAM/12UE/LIS/2005/0012

SCHEDULE 1 - SERVICE CHARGE ACCOUNT - AS CHARGED

PROFIT & LOSS ACCOUNTS

	1999	2000	2001	2002	2003	2004	2005
Turnover	2085	1792	2909	2900	3760	5380	7000
Irrecoverable charges					105		
Cost of Sales							
Electricity	132	181	89	42	45	79	166
Insurance	626	555	573	746	806	1088	1169
Repairs/renewals/decorations	420	275	132	0	751	336	4845
Window cleaning/maintenance	238	247	144	1222	1222	1172	1679
Gardens	0	0	0	500	396	699	752
Administration costs							
Bank interest/charges	0	0	0	0	193	313	0
Legal costs	0	1414	404	0	0	0	0
Audit/accountancy	617	-267	300	330	315	315	315
Management	0	0	823	822	822	822	822
Sundries	52	55	15	61	30	15	32

GMJ 19.6.06

ALEXANDRA COURT, ST IVES
CAM/12UE/LIS/2005/0012

SCHEDULE 2 - SERVICE CHARGE ACCOUNT - AS ADJUSTED BY TRIBUNAL

PROFIT & LOSS ACCOUNTS	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Turnover	2085	1792	2909	2900	3760	5380	7000
Irrecoverable charges					105		
Cost of Sales							
Electricity	132	181	89	42	45	79	166
Insurance	626	555	573	746	806	1088	1169
Repairs/renewals/decorations	420	275	132	0	751	336	2500
Window cleaning/maintenance	238	247	144	1222	1222	1172	1642
Gardens	0	0	0	400	396	400	400
Administration costs							
Bank interest/charges	0	0	0	0	193	313	0
Legal costs	0	1414	404	0	0	0	0
Audit/accountancy	617	-267	300	330	315	315	315
Management	0	0	823	822	822	822	822
Sundries	52	55	15	61	30	15	32

GMJ 19.6.06