RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/21UH/LSC/2006/0062**
Property:	**Flat 5** **25 London Road** **Uckfield** **East Sussex** **TN22 1JB**
Applicant:	**Mr. C. Bowden**
Respondent:	**Waterglen Limited** **c/o DGA Limited**
Dates of Hearing:	**6th and 20th November 2006**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. B.H.R. Simms FRICS MCIArb** **Mr. N.I. Robinson FRICS**

Date decision Issued: 15 JANUARY 2007

RE: FLAT 5, 25 LONDON ROAD, UCKFIELD, EAST SUSSEX, TN22 1JB

Background

1. Mr. Bowden ("the Applicant") is the lessee of Flat 5, 25 London Road, Uckfield, East Sussex TN22 1JB ("the subject property"). The freeholder is Waterglen Limited ("the Respondent") c/o DGA Limited the managing agents.

2. The Applicant made an application for a determination of liability to pay service charges in respect of the years ending 24th June 2004, 2005 and 2006.

3. On the 14th July 2006 provisional directions were given including:
(a) that within 21 days the Applicant was to send to the Respondent and to the Tribunal a bundle of documents setting out his case and

(b) that within 21 days of the receipt of that bundle of documents the Respondent was to send to the Applicant and to the Tribunal a response to that bundle.

4. At the request of Juliet Bellis & Co. Solicitors representing DGA Limited the times for the provision of the Applicant's statement and the Respondent's response were extended.

5. The Applicant provided a statement and a bundle of documents but the Respondent did not provide a response as required by the directions.

6. The application was listed to be heard on the 6th November 2006. By a letter dated 31st October 2006 Juliet Bellis and Co. stated that their client the Respondent had informed them that a considerable amount of pertinent documents had been discovered within archived files at an off-site location, that their client wished to go through those documents and include them within its statement of case and requested an adjournment. That request was refused.

7. The Respondent's statement in reply dated the 31st October 2006 was received at the hearing.

Inspection

8. Present at the inspection were the Applicant, Mr. Kilbane solicitor with Juliet Bellis representing the Respondent and Mr. Graham Jones a surveyor expert witness. The Applicant pointed out to us various matters. Mr. Kilbane and Mr. Jones had nothing to point out to us.

9. We noted in particular the following:
(a) The tile hanging to the front elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that at least two were damaged.
(b) We could see no evidence of pointing to the lower course of bricks under the bay window at the front of the subject property.
(c) The Applicant stated that the pointing to the porch had now been done.
(d) To the side elevation we could see that there was some new brickwork where about twelve bricks had been replaced and some small sections of pointing had been done but we could not be certain that this work had been carried out recently or at some earlier time, perhaps when the property had been converted to flats.
(e) The tile hanging to the side elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that some tiles were broken and that others were missing. Mr. Jones suggested the possibility that if reclaimed tiles had been used then it was possible that they would look much like the original tiles.
(f) In the driveway a tree stump above the ground.
(g) The Applicant stated that there had been gates and fencing across the end of the drive to separate it from the garden. We could see the remains of a path which led down the garden from where the Applicant stated the gates had been and there were what appeared to be the remains of gates or fencing or both left in a hedgerow on the boundary of No. 25 London Road. We could see four new fence panels to the boundary of the garden of the ground floor

flat which was a continuation of the fence line across the end of the drive. This was not the boundary of 25 London Road but the boundary of the ground floor flat's garden.
(h) The tile hanging to the rear elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that some tiles were broken.
(i) From outside or inside the subject property we could see little of the gutters but such guttering as we could see appeared to be clear. From inside the subject property through a window at the front we could see a hopper head which was blocked and had weeds growing in it.
(j) From a window at the rear of the subject property we could see a chimney stack and inside the subject property we could see a damp patch on the wall by the chimney stack.

The hearing

10. At the hearing we heard evidence from the Applicant and from Mr. Jones and submissions were made by the Applicant and by Mr. Kilbane. We also considered the documents provided by and on behalf of the parties.

11. Part way through the hearing Mr. Kilbane informed us that having received advice from Mr. Jones, he had sought instructions from his clients to concede some of the matters disputed by the Applicant and later he confirmed that certain matters were conceded.

Determination

12. The Tribunal reconvened on the 20th November 2006 in the absence of the parties and considered the evidence which had been given on the 6th November 2006 the documents which had been provided by and on behalf of the parties and the matters we had noted on inspection. On a balance of probabilities we found the following and our reasons are set out in paragraphs 13 and 14.

(a) The Section 20 Notice served in 2002 did not comply with the Landlord and Tenant Act 1985. The proper consultation procedure was not carried out in respect of the work done in 2004. Consequently, although the Respondent may make an application to dispense with the consultation requirements, the present position is that the maximum which the Applicant is liable to pay as his proportion of the cost of the major works is £250. The excess of £2,305.87 is to be repaid to him.

(b) In the event that any application is made by the Respondent to dispense with the consultation requirements it will of course be for the Court or Tribunal concerned to decide but in order to assist the parties and any such Court or Tribunal which is asked to consider any such application we give below the findings we would have made had the proper consultation procedure been carried out (references are to page numbers of the documents provided by the Applicant):
(i) A fee of 10% is a reasonable fee for a surveyor to charge in respect of major works but a total of £1,816.60 has been paid in respect of such fees and any further fees would be unreasonably incurred and not payable.
(ii) On P. 74 item 2 the provisional sum of £300 to replace the existing roof covering of a flat roof to the dormer on the front elevation was correctly omitted from the final account.

(iii) On P 74 item 3 the work to the parapet wall. This item was conceded by the Respondent and therefore £150 should be deducted from the charge made.
(iv) On P 74 item 11 the work to the tile hanging on the front elevation. This item was conceded by the Respondent and therefore £75 should be deducted from the charge made.
(v) On P 75 item 13 the clearing of all gutters to the front of the property and ensuring a proper fall to a downpipe. £30 was a reasonable charge.
(vi) On P 75 item 17 the clearing away of all foliage and debris within one metre of the house, scraping back shingle to expose bottom course of brickwork and repointing. This item was conceded by the Respondent and therefore £52 should be deducted from the charge made.
(vii) On P 75 item 18 the work to the tile hanging on the side elevation. This item was conceded by the Respondent and therefore £150 should be deducted from the charge made.
(viii) On P 75 item 21 the clearing of all gutters to the side of the property and ensuring a proper fall to a downpipe. £30 was a reasonable charge.
(ix) On P 75 items 22 and 23 cutting out and reinstating brickwork. Only one of the two items has been done and therefore £52 should be deducted from the charge made.
(x) On P 76 item 26 the work to the tile hanging on the rear elevation. This item was conceded by the Respondent and therefore £225 should be deducted from the charge made.
(xi) On P 76 item 30 the clearing of all gutters to the rear of the property, ensuring a proper fall to downpipes and providing extra brackets where appropriate. £75 was a reasonable charge.
(xii) On P 76 item 33. Clear away all rubbish from rear patio having spoken to Ground Floor tenant. This item should not have been charged to the service charge and therefore £45 should be deducted from the charge made.
(xiii) On P 76 items 36 and 37. Item 37 was conceded by the Respondent and item 36 was partly conceded by the Respondent. The total of £375 should be deducted from the charge made.
(xiv) On P 76 item 38. Two thirds of this item was conceded by the Respondent. The total of £100 should be deducted from the charge made.
(xv) The total deduction would have been £1,224. + VAT of £214.20 = £1,438.20. The Applicant's proportion of the deduction would have been £258.88 plus a proportion of the fees which were stated to be 10% as they would have been based on a lower sum (£25.89) making a total deduction of £284.77.
(xvi) As part of the claim by the Respondent we noted that the contingency sum of £2,500 had been omitted when £3,000 should have been omitted. On P 73 the document from Patching and Son Limited refers to a contingency sum of £2,500 + £500.

(c) The invoice from Patching and Son Limited dated 8th July 2004 in respect of fencing. This should not have been charged to the service charge and therefore £305.50 should be deducted from the charge made. The Applicant's proportion, 18%, amounting to £54.99 should be refunded.

(d) The invoices from CPS Property Services dated 8th October 2004 and 3rd November 2004 in respect of scaffolding and works to a chimney. The whole of the charge in respect of the scaffolding £828.38 and £682.48 of the charge for the works to be deducted leaving £400 including VAT. The total of £1,910.86 minus £400 leaving a deduction of £1,510.86, 18% of which is £271.95 and that sum to be refunded to the Applicant.

(e) Insurance. No refund of the charges made for insurance.

(f) Interest on money collected. No matter how the fund or funds is or are named it or them should have been treated as a reserve fund and interest should have been added. The Respondent is to calculate the interest and pay to the Applicant his proportion of it.

(g) We make an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

(h) We order that the Applicant's fees of £250 be reimbursed by the Respondent.

(i) The total of £2,882.81 as set out below to be paid by the Respondent to the Applicant within 28 days of the date of issue of this decision.

	£
Major works refund	2,305.87
Refund of charge for fencing	54.99
Refund of charge for scaffolding and work to chimney	271.95
reimbursement of fees	250.00
	2,882.81

Reasons

13. The major works.

(a) Although the Applicant was of the opinion that the Section 20 Notice dated 22nd April 2002 was valid, we found that it did not comply with the Landlord and Tenant Act 1985. In Section 20 (4) of that Act it is provided that at least two estimates shall be obtained, that a notice accompanied by a copy of the estimates shall be given to those tenants concerned and that the notice shall state a date by which the observations are to be received. In this case the notice does not state that copies of the estimates accompanied it and although there is a reference to a period of one month from the receipt of the letter to consider and comment on the tenders, a date was not stated.

(b) The problem could have been cured by serving a compliant Notice in preparation for the works to be carried out in 2004 but that was not done. It is the Applicant's case that in any event a Section 20 Notice was required in respect of those works. It is the Respondent's case that no further Section 20 Notice was required in respect of the 2004 works and on the 17th December 2003 the managing agents wrote to the leaseholders about the works and informed them that Patching & Son Limited were being asked to "firm up their price, especially with regard to provisional sums related to certain items of works." It was pointed out in the letter that the leaseholders had "the opportunity of requesting for these works to be re-tendered".

(c) It was by that time 18 months after the date of the non-compliant Section 20 Notice and this was in fact not a firming-up of a price but a re-pricing. A new Section 20 Notice was required and that would have been so even had the 2002 section 20 Notice been compliant.

(d) It follows that because there was a failure to comply with the consultation requirements the maximum which the Applicant can be called upon to pay in respect of the major works is £250.

(e) As stated above, in the event that any application is made by the Respondent to dispense with the consultation requirements it will of course be for the Court or Tribunal concerned to decide but in order to assist the parties and any such Court or Tribunal which is asked to consider any such application we have given the findings we would have made had the proper consultation procedure been carried out. References are to page numbers of the documents provided by the Applicant. Our reasons for those findings are as follows:
(i) As to the work to the guttering, we could see that the hopper head was full of earth or something similar and that weeds were growing in it but we could not be satisfied on a balance of probabilities that this was as a result of work not being done to clear the gutters. It is difficult to estimate the length of time which would be required for the hopper head to become choked. We also had regard to such guttering as we were able to see and which appeared to be clear. That supported the claim that the work had been done.
(ii) On P 75 items 22 and 23 cutting out and reinstating brickwork. We could see on inspection that some work had been done but such work could properly only be described as coming within one or other of these two items not both. We therefore deducted the cost of the less expensive item.
(iii) On P 76 item 33. Clear away all rubbish from rear patio having spoken to Ground Floor tenant. We were not satisfied that this item should be charged to the service charges because the patio is part of the ground floor flat. If the rubbish to be cleared was rubbish resulting from the works it is difficult to see how it could have been provided for in the schedule before the works started and we were not persuaded by Mr. Kilbane's suggestion that the rear patio could have been allocated as a rubbish area.
(iv) On P. 76 items 36 and 37. We were not satisfied that this work had been done.
(v) On P 76 item 38. The cutting down of a dead tree to below ground level and making good the driveway. This item was conceded on behalf of the Respondent but the Applicant in an effort to be fair pointed out that part of the work had been done in that the tree had been cut down above ground level and Mr. Kilbane then revised the Respondent's concession to two thirds of the sum. However, we asked the Applicant how big the tree had been and he told us it had been about 14 feet high. We found that the cutting down of a tree of that size was a very small part of the work and involved very little work but that the most important work and the most expensive namely the removal of the tree to below ground level and the making good of the driveway had not been done and still needs to be done. The tree stump is a hazard and is becoming more of a hazard as grass and weeds conceal it. We found that, as at first conceded by Mr. Kilbane, the full cost should be deducted.

14. The remaining matters.

(a) The invoice from Patching and Son Limited dated 8th July 2004 in respect of fencing. From our inspection and the evidence we received, we found that the invoice from Patching & Son Limited in respect of fencing was to a boundary of the garden of the ground floor flat and not fencing to a boundary in respect of which a repair could be charged to the service charge.

(b) The invoices from CPS Property Services dated 8th October 2004 and 3rd November 2004 in respect of scaffolding and works to a chimney. The Respondent either directly or

through its managing agents was clearly aware before the works were carried out in 2004 that work was required to the chimney and therefore that work should have been carried out as part of the 2004 works while the scaffolding was in place. By not following that course, erecting scaffolding at a later date and having the work carried out separately, additional expense was unreasonably incurred and should not be charged to the service charges. We note the failure by the Respondent to provide a copy of the quotation dated 19th October 2004 referred to in the invoice dated 3rd November 2004 or to provide any evidence, other than the invoices, of the work done. We would not expect to see anything in the 2006 accounts for work to the chimney. We accept that if carried out as part of the major works there may have been the need for a small addition to the scaffolding and, of course, the work to the chimney would have been charged for and therefore we have included an allowance for both aspects and VAT in our figure of £400.

(c) Insurance. Neither the lease nor case law (in particular the case of Berrycroft Management Co. Ltd. v Sinclair Gardens Investment (Kensington) Ltd. 1 EGLR 47 CA) requires the Respondent to obtain the cheapest quote for insurance. The Applicant challenged only the premium charged in 2006 and did not challenge earlier years because he did not have sufficient information to obtain a quote. The Respondent had obtained insurance with Axa for a premium of £1,336.95 and had produced the insurance certificate. The Applicant had obtained a quote from Norwich Union for £776.65 and produced evidence of this. Norwich Union is a reputable Company and had insured the property previously. There was some evidence that the managing agents considered Axa to be uncompetative and the Applicant had used such information as was available to him to obtain that quote but he accepted that he had obtained the quote on line without speaking to an advisor and we did not have evidence that all the risks would be covered by Norwich Union for the premium quoted. As a result we were not able to find that the insurance premium was unreasonable.

(d) Interest on money collected. Mr. Kilbane relied on the accountants saying that interest was payable only on the reserve fund and that the money held by the Respondent or the managing agents was in a sinking fund. Strictly a sinking fund is a fund created for a particular purpose e.g. the replacement of a central heating boiler. We observe in the notes to the service charge accounts for the period ended 24th June 2004 the reference to a sinking fund and to a building works fund and in the letter dated 17th December 2003 from the managing agents to the Applicant the reference to a sinking fund amount including interest. We noted the contents of paragraphs 4 and 5 of Schedule 6 to the lease and that in the lease there is authority only for a reserve fund. Therefore if the Respondent collects in money and keeps it in a fund that fund must in fact be a reserve fund no matter what name is given to it and it should have interest added to it.

(e) The application for an order under Section 20C of the Landlord and Tenant Act 1985. We find that it is just and equitable in the circumstances to make such an order because the Applicant was justified in bringing these proceedings to clarify the position and neither the Respondent nor anyone on the Respondent's behalf complied with the directions given. It was only during the hearing that a number of the disputed items were conceded. Had the Respondent or the managing agents been more aware of the subject property and the work which was or was not done in respect of it or had dealt properly with the matters when they were raised by the Applicant those matters could have been agreed or at the very least conceded at a much earlier stage with a consequent saving for all concerned.

(f) The application for reimbursement of fees of £100 for the application and £150 for the hearing. For the same reasons as we made an order under Section 20C we order the reimbursement of fees of £250 by the Respondent to the Applicant.

R. Norman
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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& LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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Date decision Issued: 15 JANUARY 2007

RE: FLAT 5, 25 LONDON ROAD, UCKFIELD, EAST SUSSEX, TN22 1JB

Background

1. Mr. Bowden ("the Applicant") is the lessee of Flat 5, 25 London Road, Uckfield, East Sussex TN22 1JB ("the subject property"). The freeholder is Waterglen Limited ("the Respondent") c/o DGA Limited the managing agents.

2. The Applicant made an application for a determination of liability to pay service charges in respect of the years ending 24th June 2004, 2005 and 2006.

3. On the 14th July 2006 provisional directions were given including:
(a) that within 21 days the Applicant was to send to the Respondent and to the Tribunal a bundle of documents setting out his case and

(b) that within 21 days of the receipt of that bundle of documents the Respondent was to send to the Applicant and to the Tribunal a response to that bundle.

4. At the request of Juliet Bellis & Co. Solicitors representing DGA Limited the times for the provision of the Applicant's statement and the Respondent's response were extended.

5. The Applicant provided a statement and a bundle of documents but the Respondent did not provide a response as required by the directions.

6. The application was listed to be heard on the 6th November 2006. By a letter dated 31st October 2006 Juliet Bellis and Co. stated that their client the Respondent had informed them that a considerable amount of pertinent documents had been discovered within archived files at an off-site location, that their client wished to go through those documents and include them within its statement of case and requested an adjournment. That request was refused.

7. The Respondent's statement in reply dated the 31st October 2006 was received at the hearing.

Inspection

8. Present at the inspection were the Applicant, Mr. Kilbane solicitor with Juliet Bellis representing the Respondent and Mr. Graham Jones a surveyor expert witness. The Applicant pointed out to us various matters. Mr. Kilbane and Mr. Jones had nothing to point out to us.

9. We noted in particular the following:
(a) The tile hanging to the front elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that at least two were damaged.
(b) We could see no evidence of pointing to the lower course of bricks under the bay window at the front of the subject property.
(c) The Applicant stated that the pointing to the porch had now been done.
(d) To the side elevation we could see that there was some new brickwork where about twelve bricks had been replaced and some small sections of pointing had been done but we could not be certain that this work had been carried out recently or at some earlier time, perhaps when the property had been converted to flats.
(e) The tile hanging to the side elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that some tiles were broken and that others were missing. Mr. Jones suggested the possibility that if reclaimed tiles had been used then it was possible that they would look much like the original tiles.
(f) In the driveway a tree stump above the ground.
(g) The Applicant stated that there had been gates and fencing across the end of the drive to separate it from the garden. We could see the remains of a path which led down the garden from where the Applicant stated the gates had been and there were what appeared to be the remains of gates or fencing or both left in a hedgerow on the boundary of No. 25 London Road. We could see four new fence panels to the boundary of the garden of the ground floor

flat which was a continuation of the fence line across the end of the drive. This was not the boundary of 25 London Road but the boundary of the ground floor flat's garden.
(h) The tile hanging to the rear elevation. The tiles appeared to be the original tiles with no evidence of work having been carried out in respect of them or that any of them had been replaced. We could see that some tiles were broken.
(i) From outside or inside the subject property we could see little of the gutters but such guttering as we could see appeared to be clear. From inside the subject property through a window at the front we could see a hopper head which was blocked and had weeds growing in it.
(j) From a window at the rear of the subject property we could see a chimney stack and inside the subject property we could see a damp patch on the wall by the chimney stack.

The hearing

10. At the hearing we heard evidence from the Applicant and from Mr. Jones and submissions were made by the Applicant and by Mr. Kilbane. We also considered the documents provided by and on behalf of the parties.

11. Part way through the hearing Mr. Kilbane informed us that having received advice from Mr. Jones, he had sought instructions from his clients to concede some of the matters disputed by the Applicant and later he confirmed that certain matters were conceded.

Determination

12. The Tribunal reconvened on the 20th November 2006 in the absence of the parties and considered the evidence which had been given on the 6th November 2006 the documents which had been provided by and on behalf of the parties and the matters we had noted on inspection. On a balance of probabilities we found the following and our reasons are set out in paragraphs 13 and 14.

(a) The Section 20 Notice served in 2002 did not comply with the Landlord and Tenant Act 1985. The proper consultation procedure was not carried out in respect of the work done in 2004. Consequently, although the Respondent may make an application to dispense with the consultation requirements, the present position is that the maximum which the Applicant is liable to pay as his proportion of the cost of the major works is £250. The excess of £2,305.87 is to be repaid to him.

(b) In the event that any application is made by the Respondent to dispense with the consultation requirements it will of course be for the Court or Tribunal concerned to decide but in order to assist the parties and any such Court or Tribunal which is asked to consider any such application we give below the findings we would have made had the proper consultation procedure been carried out (references are to page numbers of the documents provided by the Applicant):
(i) A fee of 10% is a reasonable fee for a surveyor to charge in respect of major works but a total of £1,816.60 has been paid in respect of such fees and any further fees would be unreasonably incurred and not payable.
(ii) On P. 74 item 2 the provisional sum of £300 to replace the existing roof covering of a flat roof to the dormer on the front elevation was correctly omitted from the final account.

(iii) On P 74 item 3 the work to the parapet wall. This item was conceded by the Respondent and therefore £150 should be deducted from the charge made.
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(xi) On P 76 item 30 the clearing of all gutters to the rear of the property, ensuring a proper fall to downpipes and providing extra brackets where appropriate. £75 was a reasonable charge.
(xii) On P 76 item 33. Clear away all rubbish from rear patio having spoken to Ground Floor tenant. This item should not have been charged to the service charge and therefore £45 should be deducted from the charge made.
(xiii) On P 76 items 36 and 37. Item 37 was conceded by the Respondent and item 36 was partly conceded by the Respondent. The total of £375 should be deducted from the charge made.
(xiv) On P 76 item 38. Two thirds of this item was conceded by the Respondent. The total of £100 should be deducted from the charge made.
(xv) The total deduction would have been £1,224. + VAT of £214.20 = £1,438.20. The Applicant's proportion of the deduction would have been £258.88 plus a proportion of the fees which were stated to be 10% as they would have been based on a lower sum (£25.89) making a total deduction of £284.77.
(xvi) As part of the claim by the Respondent we noted that the contingency sum of £2,500 had been omitted when £3,000 should have been omitted. On P 73 the document from Patching and Son Limited refers to a contingency sum of £2,500 + £500.

(c) The invoice from Patching and Son Limited dated 8th July 2004 in respect of fencing. This should not have been charged to the service charge and therefore £305.50 should be deducted from the charge made. The Applicant's proportion, 18%, amounting to £54.99 should be refunded.

(d) The invoices from CPS Property Services dated 8th October 2004 and 3rd November 2004 in respect of scaffolding and works to a chimney. The whole of the charge in respect of the scaffolding £828.38 and £682.48 of the charge for the works to be deducted leaving £400 including VAT. The total of £1,910.86 minus £400 leaving a deduction of £1,510.86, 18% of which is £271.95 and that sum to be refunded to the Applicant.

(e) Insurance. No refund of the charges made for insurance.

(f) Interest on money collected. No matter how the fund or funds is or are named it or them should have been treated as a reserve fund and interest should have been added. The Respondent is to calculate the interest and pay to the Applicant his proportion of it.

(g) We make an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

(h) We order that the Applicant's fees of £250 be reimbursed by the Respondent.

(i) The total of £2,882.81 as set out below to be paid by the Respondent to the Applicant within 28 days of the date of issue of this decision.

	£
Major works refund	2,305.87
Refund of charge for fencing	54.99
Refund of charge for scaffolding and work to chimney	271.95
reimbursement of fees	250.00
	2,882.81

Reasons

13. The major works.

(a) Although the Applicant was of the opinion that the Section 20 Notice dated 22nd April 2002 was valid, we found that it did not comply with the Landlord and Tenant Act 1985. In Section 20 (4) of that Act it is provided that at least two estimates shall be obtained, that a notice accompanied by a copy of the estimates shall be given to those tenants concerned and that the notice shall state a date by which the observations are to be received. In this case the notice does not state that copies of the estimates accompanied it and although there is a reference to a period of one month from the receipt of the letter to consider and comment on the tenders, a date was not stated.

(b) The problem could have been cured by serving a compliant Notice in preparation for the works to be carried out in 2004 but that was not done. It is the Applicant's case that in any event a Section 20 Notice was required in respect of those works. It is the Respondent's case that no further Section 20 Notice was required in respect of the 2004 works and on the 17th December 2003 the managing agents wrote to the leaseholders about the works and informed them that Patching & Son Limited were being asked to "firm up their price, especially with regard to provisional sums related to certain items of works." It was pointed out in the letter that the leaseholders had "the opportunity of requesting for these works to be re-tendered".

(c) It was by that time 18 months after the date of the non-compliant Section 20 Notice and this was in fact not a firming-up of a price but a re-pricing. A new Section 20 Notice was required and that would have been so even had the 2002 section 20 Notice been compliant.

(d) It follows that because there was a failure to comply with the consultation requirements the maximum which the Applicant can be called upon to pay in respect of the major works is £250.

(e) As stated above, in the event that any application is made by the Respondent to dispense with the consultation requirements it will of course be for the Court or Tribunal concerned to decide but in order to assist the parties and any such Court or Tribunal which is asked to consider any such application we have given the findings we would have made had the proper consultation procedure been carried out. References are to page numbers of the documents provided by the Applicant. Our reasons for those findings are as follows:
(i) As to the work to the guttering, we could see that the hopper head was full of earth or something similar and that weeds were growing in it but we could not be satisfied on a balance of probabilities that this was as a result of work not being done to clear the gutters. It is difficult to estimate the length of time which would be required for the hopper head to become choked. We also had regard to such guttering as we were able to see and which appeared to be clear. That supported the claim that the work had been done.
(ii) On P 75 items 22 and 23 cutting out and reinstating brickwork. We could see on inspection that some work had been done but such work could properly only be described as coming within one or other of these two items not both. We therefore deducted the cost of the less expensive item.
(iii) On P 76 item 33. Clear away all rubbish from rear patio having spoken to Ground Floor tenant. We were not satisfied that this item should be charged to the service charges because the patio is part of the ground floor flat. If the rubbish to be cleared was rubbish resulting from the works it is difficult to see how it could have been provided for in the schedule before the works started and we were not persuaded by Mr. Kilbane's suggestion that the rear patio could have been allocated as a rubbish area.
(iv) On P. 76 items 36 and 37. We were not satisfied that this work had been done.
(v) On P 76 item 38. The cutting down of a dead tree to below ground level and making good the driveway. This item was conceded on behalf of the Respondent but the Applicant in an effort to be fair pointed out that part of the work had been done in that the tree had been cut down above ground level and Mr. Kilbane then revised the Respondent's concession to two thirds of the sum. However, we asked the Applicant how big the tree had been and he told us it had been about 14 feet high. We found that the cutting down of a tree of that size was a very small part of the work and involved very little work but that the most important work and the most expensive namely the removal of the tree to below ground level and the making good of the driveway had not been done and still needs to be done. The tree stump is a hazard and is becoming more of a hazard as grass and weeds conceal it. We found that, as at first conceded by Mr. Kilbane, the full cost should be deducted.

14. The remaining matters.

(a) The invoice from Patching and Son Limited dated 8th July 2004 in respect of fencing. From our inspection and the evidence we received, we found that the invoice from Patching & Son Limited in respect of fencing was to a boundary of the garden of the ground floor flat and not fencing to a boundary in respect of which a repair could be charged to the service charge.

(b) The invoices from CPS Property Services dated 8th October 2004 and 3rd November 2004 in respect of scaffolding and works to a chimney. The Respondent either directly or

through its managing agents was clearly aware before the works were carried out in 2004 that work was required to the chimney and therefore that work should have been carried out as part of the 2004 works while the scaffolding was in place. By not following that course, erecting scaffolding at a later date and having the work carried out separately, additional expense was unreasonably incurred and should not be charged to the service charges. We note the failure by the Respondent to provide a copy of the quotation dated 19th October 2004 referred to in the invoice dated 3rd November 2004 or to provide any evidence, other than the invoices, of the work done. We would not expect to see anything in the 2006 accounts for work to the chimney. We accept that if carried out as part of the major works there may have been the need for a small addition to the scaffolding and, of course, the work to the chimney would have been charged for and therefore we have included an allowance for both aspects and VAT in our figure of £400.

(c) Insurance. Neither the lease nor case law (in particular the case of Berrycroft Management Co. Ltd. v Sinclair Gardens Investment (Kensington) Ltd. 1 EGLR 47 CA) requires the Respondent to obtain the cheapest quote for insurance. The Applicant challenged only the premium charged in 2006 and did not challenge earlier years because he did not have sufficient information to obtain a quote. The Respondent had obtained insurance with Axa for a premium of £1,336.95 and had produced the insurance certificate. The Applicant had obtained a quote from Norwich Union for £776.65 and produced evidence of this. Norwich Union is a reputable Company and had insured the property previously. There was some evidence that the managing agents considered Axa to be uncompetative and the Applicant had used such information as was available to him to obtain that quote but he accepted that he had obtained the quote on line without speaking to an advisor and we did not have evidence that all the risks would be covered by Norwich Union for the premium quoted. As a result we were not able to find that the insurance premium was unreasonable.

(d) Interest on money collected. Mr. Kilbane relied on the accountants saying that interest was payable only on the reserve fund and that the money held by the Respondent or the managing agents was in a sinking fund. Strictly a sinking fund is a fund created for a particular purpose e.g. the replacement of a central heating boiler. We observe in the notes to the service charge accounts for the period ended 24th June 2004 the reference to a sinking fund and to a building works fund and in the letter dated 17th December 2003 from the managing agents to the Applicant the reference to a sinking fund amount including interest. We noted the contents of paragraphs 4 and 5 of Schedule 6 to the lease and that in the lease there is authority only for a reserve fund. Therefore if the Respondent collects in money and keeps it in a fund that fund must in fact be a reserve fund no matter what name is given to it and it should have interest added to it.

(e) The application for an order under Section 20C of the Landlord and Tenant Act 1985. We find that it is just and equitable in the circumstances to make such an order because the Applicant was justified in bringing these proceedings to clarify the position and neither the Respondent nor anyone on the Respondent's behalf complied with the directions given. It was only during the hearing that a number of the disputed items were conceded. Had the Respondent or the managing agents been more aware of the subject property and the work which was or was not done in respect of it or had dealt properly with the matters when they were raised by the Applicant those matters could have been agreed or at the very least conceded at a much earlier stage with a consequent saving for all concerned.

(f) The application for reimbursement of fees of £100 for the application and £150 for the hearing. For the same reasons as we made an order under Section 20C we order the reimbursement of fees of £250 by the Respondent to the Applicant.

R. Norman
Chairman