

Ref: LVT/SC/CR/034/056/03

**LEASEHOLD VALUATION TRIBUNAL**

FOR THE LONDON RENT ASSESSMENT PANEL

**DETERMINATION**

UNDER SECTIONS 19(2A) and 20C OF THE LANDLORD AND  
TENANT ACT 1985 (as amended)

**RE: FIRS CLOSE, GROVE ROAD, MITCHAM, SURREY**

|                           |                                                                                           |                     |
|---------------------------|-------------------------------------------------------------------------------------------|---------------------|
| <b><u>Applicant:</u></b>  | Centro Group Ltd                                                                          | [Freeholder/Lessor] |
| <b><u>Respondent:</u></b> | Firs Close Residents' Association                                                         | [Lessees]           |
| Hearing:                  | 20 & 21 August 2003                                                                       |                     |
| Inspection:               | 20 August 2003 (before Hearing)                                                           |                     |
| Appearances:              | Mr R P Harwood FRICS Managing Director of Centro Group Ltd                                |                     |
|                           | With Mrs E Elliot (property manager) and Miss A Clarke (personal assistant)               |                     |
|                           |                                                                                           | [For Applicant]     |
|                           | Mr P J Gatt Secretary of Firs Close Residents Association (also Lessee of Flat 109)       |                     |
|                           | With various Lessees/Members of the Association (13 on 20 August and 8 on 21 August 2003) |                     |
|                           |                                                                                           | [For Respondent]    |

**Members of the Leasehold Valuation Tribunal:**

PROFESSOR J T FARRAND QC LLD FCI Arb Solicitor (Chairman)

MR D N HUCKLE FRICS

MRS L WALTER MA (Hons)

1. By an Application dated 8 January 2003, addressed to the Southern Rent Assessment Panel, Centro Group Ltd sought a determination of the reasonableness of service charges as to (a) costs to be incurred (b) standards and specification of works/services and (c) amount payable before costs incurred, all in the year 2003. An accompanying letter explained that the application related only to proposed external redecoration to the Firs Close estate, comprising 48 flats and 22 houses. It was stated that a three year cycle was followed but that last redecoration was in 1999 and previously in 1996. The total cost in 2003 was to be £58,910, a substantial increase over 1999, when the quoted cost was £31,264, and the work was to be undertaken, as in 1999, by an associated company called Centro Property Services Ltd. The letter further explained that, following consultation under s.20 of the 1985 Act, a number of lessees had indicated objections to the proposal. It was also stated that there was no formally recognised Residents' Association as a point of contact. Therefore, in order to facilitate the collection of 'interim' payments before work could commence, the Application was being made.

2. The Application was transferred the London Rent Assessment Panel, as appropriate to the area, on 12 March 2003. A Pre-Trial Review was held and Directions issued on 21 May 2003. A certificate of recognition of the Firs Close Residents' Association under s.29 of the Landlord and Tenant Act 1985 was issued on 30 May 2003. An Application for an order under s.20C of the 1985 Act, to exclude the Lessor's costs of these proceedings from future service charges, was made on behalf of the Association (52 members being listed) on 12 August 2003.

3. Essentially, for the Applicant it had been asserted, primarily, that the proposed redecoration work was necessary. Reliance was placed upon a letter from K M Kennedy FRICS dated 30 April, who had inspected the Firs Close estate on 29 April 2003, which reported:

The purpose of the inspection was to ascertain whether the external redecoration should be carried out in this year as part of a three year rolling programme of maintenance.

Having inspected the exteriors of the properties I found that the paintwork was peeling and cracked in many instances on the weathered south elevation, and in some instances the cills to the windows were rotten and missing and required remedial works to be put in hand to cut out the rotten areas and piece in with new timber before painting.

In my opinion, as an independent Chartered Building Surveyor, it would be reasonable to carry out the external maintenance and redecoration works this year as programmed to prevent further deterioration occurring.

4. Secondly, the Applicant asserted that the cost of the proposed redecoration work was not unreasonable. In particular, it was considered that the increase from 1999 of the 'pure' redecoration element (from £26,377 to £29,400) was acceptable and established that the substantial increase was attributable to the greater cost of 'access equipment (from £1,200 to £18,200). Here, reference was made to a Report on Health and Safety Implications Associated with Redecoration Works at Firs Close prepared by a firm called SW&H and dated 4 March 2002, which was basically against the use of ladders and for the use of scaffolding at higher levels. Also reference was made to a Tender Analysis dated April 2002 showing that three other potential contractors had included in their quotations, respectively, amounts of £24,000, £31,752 and £41,860 for 'Scaffold and Access Equipment'. The Analysis also showed that Centro tender for the specified works of redecoration, at £58,910, was significantly lower than the three others, at £69,761, £87,029.98 and £111,136.28. It was pointed out that there were savings because Centro would employ contracted labour and be exempt from VAT, except as to proposed management/planning fees totalling 12%.

5. By letters to the Lessees, dated 13 May 2003, accompanying the s.20 Notices, the Applicant stated that proposed cost did not include the cost of timber repairs to the windows of individual flats, although these would be necessary for satisfactory redecoration (see Mr Kennedy's Report). The reason given was that, under the Leases, these repairs were the responsibility of Lessees but an option was, in effect, offered to undertake them separately at quoted prices. As to this, the Tribunal observed that the Leases did contain a Lessee's covenant to repair the Demised Premises (Fifth Schedule Part II (1)), which were defined as including windows and window-frames (Second Schedule (i)). The Leases also contained a Lessor's covenant to repair the Main Structure (Sixth Schedule (1)(i)(a)), which was also defined as including windows and window-frames *but* expressly not if they formed part of any Demised Premises (First Schedule (First Schedule para.(xxiii))).

6. Against the Applicant's case, the Respondent Association relied upon a Report On Suitability Of Specification For External Redecoration And Ancillary Repairs, dated 24 June 2003, prepared by N S Hickling BSc Dip Arb MRICS MCI Arb. Although suggesting an allegedly less expensive form of access equipment, ie the hiring of hoists, the Report concluded, with its REASONS AND CONCLUSIONS, as follows –

- 3.1 From my inspection of the blocks and houses forming Firs Close it is evident that the external decorations are in generally good order within

the majority of areas having only been redecorated in 1999. However, a number of windows particularly on the blocks backing onto the railway have been significantly affected by rainwater penetration, causing the timber to deteriorate. This will therefore necessitate repairs and the replacement of windows in areas, which a number of the flat and house owners have already done in areas. The cost of such replacement is I understand the leaseholders liability and any repairs to the windows should also be undertaken by them in accordance with the terms of their lease. However, further repairs where pointing is loose and missing in areas will be required to the communal parts of various blocks, whereas the specification does not allow for this. This will therefore lead to additional charges being applicable with regard to these items, which have not been allowed for.

- 3.2 It would therefore be our recommendation that the specification be re-drafted, allowing for all necessary repairs and decorations to the areas that have been excluded, including the beams above the bin store details at the front of the various blocks. There should also be specific omissions or reference to the replacement PVCu windows, which do not require decoration to allow the works to be priced effectively. This revised Specification should then be put out to Tender to local contractors, who are more likely to give competitive estimates for work in their area, with a suitable return date to which all contractors must comply to provide a more transparent Tender. In addition we would recommend that reference to the contract under which the contractor will be employed should be made and it would also be expected that there would be a damages clause within the contract in case of non-completion within the stipulated time period. I believe that this is required to safeguard the Lessees interests.

7. It appeared to the Tribunal to be difficult to read this Report as suggesting that it would not be reasonable for the Applicant to incur costs in 2003 as proposed on works of external redecoration or that the works within the specification would not be of a reasonable standard or that the amount(s) payable before costs were incurred would not be reasonable (ie as to be determined within s.19(2B) of the 1985 Act). Regrettably, Mr Hickling did not attend the Hearing in order to explain his Report. Plainly, however, the prior repair of certain windows by or on behalf of Lessees was required as indicated by Mr Kennedy.

8. The Tribunal's inspection of the Firs Close estate before the Hearing led to views of the property which were not markedly inconsistent with those reported by Mr Kennedy and Mr Hickling. Generally, the exteriors of the buildings on the estate were considered to be in a good decorative condition, apart from the repair work needed to a number of ground floor windows and also to certain communal entrances. The question that arose

for the Tribunal was whether the external decorative condition was so good that incurring costs on the proposed cyclical redecoration in 2003 could not be regarded as reasonable. This question was, accordingly, raised and addressed at the Hearing, where Mr Harwood relied primarily on Mr Kennedy's expert view as well as on the absence of a contrary expert view on the part of Mr Hickling. He added that only a small minority of Lessees had expressed such a view and that references had been made by Lessees to the poor decorative state of the estate.

9. At the Hearing, on behalf of the Association and after consulting the (eight) Lessees/members present, Mr Gatt made two submissions. The first was that the majority (80%) of Firs Close buildings was in good condition as to exterior decoration, especially the higher levels, so that it was not necessary to undertake the proposed work now. The second submission was that the Lessees should be allowed six months in which to arrange required repairs of windows and window frames by a reputable company and that the question of exterior redecoration should be reassessed in one year's time, including the possibility of phasing the work. He recognised that the repaired woodwork would need painting for immediate protection and estimated that some ten ground floor units were affected.

10. In response, Mr Harwood asserted that the repainting of the repaired windows would necessitate another s.20 consultation but that the Lessor's obligation under the Leases was "to paint the *whole* of the outside wood iron or other work of any buildings on the Property" (Sixth Schedule Part I para.(1)(iv)(a); emphasis supplied). This meant, he contended, that the Lessor was precluded from merely painting repaired windows and from undertaking the redecoration in phases. The Tribunal was not impressed by this extreme 'all or nothing' construction, which appeared too strict and impractical for acceptance. However, Mr Harwood further argued that adoption of Mr Gatt's submissions would be incompatible with good estate management and would lead to a "patchwork quilt" style of redecoration. He added that the fact that the appearance of Firs Close led people to think that the proposed redecoration was a compliment to the standard of the work carried out in 1999 but that regular redecoration was required in order to maintain quality and value of the estate and of the flats and houses involved and that closer examination would demonstrate that it was required now as reported by Mr Kennedy.

11. Mr Harwood also drew attention to a quotation for exterior decorating work at Firs Close, which had been obtained by the Residents' Association from P J Grant Painting and Decorating, dated 25 June 2002. This was for a

price, inclusive of all labour and materials, of £35,776 plus VAT. Mr Harwood observed that it was not entirely clear what specification this was based upon but that it did not include any amount for access equipment, which would be required for health and safety reasons. Comparing like with like that price substantially exceeded Centro's price for decorating of £29,400 (with no VAT payable). He further emphasised that the real reason for the greatly increased cost since 1999 was the huge amount that now had to be spent on access equipment other than simply ladders.

## **Conclusion**

12. The Tribunal carefully considered all the information available and the submissions made in the light of its inspection and of its members' general knowledge and experience. The sole issue occasioning concern was the reasonableness of incurring such substantial redecoration costs – with the financial burden falling on Lessees – on such a seemingly short cyclical basis as 3 years. The Tribunal would have thought that a 5-7 year cycle would be sufficient in practice, depending upon actual circumstances of deterioration. However, in this case slippage had occurred in the cycle - Mr Harwood had indicated that, assuming the window repairs were completed and interim service charges largely paid, work could commence in October 2003, which would be nearer 5 than 3 years. Accordingly, on balance, given the slippage as well as the deterioration of some of the ground floor woodwork, the Tribunal accepted that it would be reasonable for the Applicant to undertake the redecoration works as proposed. This view was, at least, consistent with the expert evidence in front of the Tribunal from Mr Kennedy and, probably, Mr Hickling. There was no cogent evidence that the costs to be incurred, although higher than before, were not reasonable both overall and as to particular items – Centro's was the lowest of 4 tenders and of 5 if PJ Grant's were to be adjusted and compared. In addition, no sufficient challenge was mounted against the standard of works in the specification or against the reasonableness of the amounts payable before costs were incurred. Accordingly, in general, the case made by Mr Harwood on behalf of his applicant company, essentially based on the requirements of good estate management, is accepted. The Tribunal determines that the costs proposed and payable for external redecoration of houses and flats at Firs Close in 2003 (as set out in the s.20 Notice dated 13 May 2002 and totalling £58,910) are reasonable.

## Costs

13. Finally, an application had been made on behalf of the Respondent Association under s.20C of the 1985 Act for an order that the costs incurred by the Applicant in connection with these proceedings should not, in effect, be included in any future service charges account. Although Mr Gatt spoke in support of this Application at the Hearing, no detailed submissions were made. Mr Harwood, however, explained that the only costs for such inclusion would be the £350 application fee together with something for preparation of the bundles of documents and that there would be no charge in respect of his or his assistants' time.

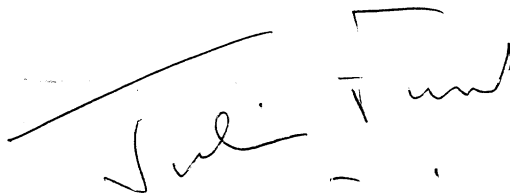
14. The Tribunal considered the application in the light of the guidance given by in *Langford Tenants v Doren Ltd* 2001, at para.23, (LRX/37/2000). There HH Judge Rich QC first emphasised that the only applicable principle was what was just and equitable in the circumstances, ie in accordance with s.20C(3). Nevertheless, he proceeded to be more specific by also pointing out that excessive costs unreasonably incurred would not be recoverable anyway by a landlord (because of s.19 of the 1985 Act), so that the s.20C power should be used only to avoid the unjust payment of otherwise recoverable costs (para.31). After this, he indicated an even more restrictive approach (para.32):

Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively that is a salutary power, which may be used with justice and equity; but those entrusted with the discretion given by s.20C should be cautious to ensure that it is not itself turned into an instrument of oppression.

Plainly, it is impossible in the circumstances of this case, including the Tribunal's determination, for the Tribunal to find that the Applicant had abused its rights or used them oppressively. It follows that there is no basis on which the tribunal could properly consider it just and equitable to make the s.20C order sought. Accordingly, the application is refused.

**CHAIRMAN**

**DATE**



27th August 2003