LEASEHOLD VALUATION TRIBUNAL

OF THE

MIDLAND RENT ASSESSMENT PANEL

BIR/00CS/NSP/2002/0006

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 19(2B)
OF THE LANDLORD AND TENANT ACT 1985

Applicant:	Troybest (Holdings) (landlord)
Respondents:	Mr A Birch and others (representing the leaseholders)
Subject properties:	Maisonettes/flats at Greenlawns St Mary's Road Tipton West Midlands DY4 0SU
Application to LVT:	17 September 2002
Hearing:	6 June 2003
Appearances:	
For the applicant:	Mr L Smith (Troybest (Holdings) Ltd) Ms C Cunningham (Counsel) Mr A Cave (Challinors Lyon Clark (Solicitors)) Mr M Woolley (Woolley Pritchard Co Ltd) Mr P Cassidy (Woolley Pritchard Co Ltd)
For the respondent:	Mr A Birch (Leaseholder (No 125)) Mr H Waldron (Leaseholder (No 129)) Mrs C Waldron (Leaseholder (No 129)) Mr S Shingles (Leaseholder (No 109))
Members of the Tribunal:	Professor N P Gravells MA Mr N R Thompson FRICS Mr D Underhill
Date of determination:	

Application

1 This case involves an application by the landlord of the subject properties under subsection (2B) of section 19 of the Landlord and Tenant Act 1985 as amended ("the 1985 Act") to the Leasehold Valuation Tribunal of the Midland Rent Assessment Panel.

2 Subsection (2B) provides:

> An application may also be made to a leasehold valuation tribunal by a tenant by whom, or landlord to whom, a service charge may be payable for a determination - (a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable, (b) whether services provided or works carried out to a particular specification would be of a reasonable standard, or (c) what amount payable before costs are incurred would be reasonable.

3 The application in fact relates to proposed service charge expenditure for the period 24 June 2002 to 23 June 2003; but, as is not uncommon in these cases, the application has largely been overtaken by events in so far as the hearing of the application took place approximately three weeks before the end of the period covered by the application. In the circumstances, the case proceeded on the basis that the application was a "hybrid" application under both subsections (2A) and (2B) relating respectively to service charge expenditure already incurred and expenditure proposed to be incurred during the remaining three weeks of the period covered by the application.

4 To complete the history of this case, applications under both subsection (2A) and (2B) were first received from Mr Birch and Mr Waldron (representing the leaseholders) in July 2002. However, at a pre-trial review held on 27 February 2003 it became apparent that, because all relevant service charges covering the period up to and including 23 June 2002 had been paid in full, the jurisdiction of the Leasehold Valuation Tribunal extended only to the period 24 June 2002 to 23 June 2003. In the circumstances, it was agreed that the remaining matters in dispute between the parties could be fully considered and determined pursuant to the present application of the landlord; and therefore that the leaseholders would withdraw their applications.

5 Directions were issued for the subsequent conduct of the present application.

Subject properties

6 The subject properties comprise sixty-four purpose-built maisonettes and flats in four blocks. The blocks are located on St Mark's Road in Tipton, in a mixed residential/commercial area approximately five kilometres from the centre of Dudley. Construction is mainly of brick with wood cladding around the windows and with flat mineral felt roofs. Each of the subject properties includes a garage in one of the separate garage blocks on the development. Apart from access roads and pathways, the site of the development is otherwise laid to grass.

7 In fact, one section of D block, comprising seven maisonettes and one flat, remains closed, pursuant to a Prohibition Notice under section 10 of the Fire Precautions Act 1971 issued by the West Midlands Fire and Civil Defence Authority on 8 April 2002.

Inspection

8 The Leasehold Valuation Tribunal inspected the subject properties on 6 June 2003, in the presence of Mr Birch and Mr Waldron (representing the leaseholders) and Mr Cassidy (of Woolley Pritchard, the management company employed by the landlord). The Tribunal conducted an examination of the relevant parts of the exterior of the subject properties at ground level and also the ground floor common parts of all four blocks (other than the closed section of Block D).

Hearing

9 A hearing was held on 6 June 2003 at the offices of the Midland Rent Assessment Panel in Birmingham.

10 The applicant landlord (Troybest (Holdings) Ltd) was represented by Ms Cunningham (of Counsel), instructed by Challinors Lyon Clark. Mr Smith (of Troybest) and Mr Woolley and Mr Cassidy (of Woolley Pritchard, the landlord's management company) gave evidence.

11 The respondent leaseholders were represented by Mr Birch and Mr Waldron, two of the resident leaseholders. Mrs Waldron and Mr Shingles, also resident leaseholders, were also present and gave evidence on behalf of the leaseholders.

12 The Tribunal heard representations from the parties on the remaining matters in dispute (and those representations are outlined below in the context of the determination on each matter).

Determination

13 In its determination of the issues in dispute between the parties the Tribunal took account of all relevant evidence and submissions presented by the parties.

Preliminary legal issues

14 The applicant submitted a schedule of legal issues for determination. The first three issues simply mirrored the wording of section 19(2B) of the 1985 Act set out in paragraph 2 above and reflected the three matters on which the Tribunal has jurisdiction to make a determination in the context of the present application. The remaining three issues concerned subsidiary matters on which the Tribunal made preliminary determinations, although the respondents did not persist in any real challenge to the submissions of the applicant.

15 The first issue was whether the respondent leaseholders were entitled to challenge the reasonableness of (proposed) service charge expenditure on the basis that they were willing and able themselves to carry out particular services, although the leases imposed an obligation on the applicant landlord to provide those services. The Tribunal held that, notwithstanding the willingness of some leaseholders to carry out particular services, in the absence of a formal variation of the leases of all the subject properties, the obligation of the applicant to provide those services continued and that it was reasonable for the applicant to incur reasonable costs in providing those services.

16 The second issue was whether the respondent leaseholders were entitled to rely on the alleged poor standard of services provided and/or works carried out in the past (and in periods for which the service charges had been paid in full) in relation to the issues of whether (proposed) costs are reasonable and whether the amounts payable before costs are incurred are reasonable. The Tribunal accepted the argument of the applicant that the respondents, in seeking to rely on such matters, were seeking to reopen historic matters and thereby effectively to circumvent the decision in *R (on the application of Daejan Properties Ltd) v London Leasehold Valuation Tribunal* [2001] 3 EGLR 28 that such matters are not within the jurisdiction of the Tribunal.

17 The third issue was whether the applicant landlord was obliged to contract for the provision of services at the cheapest available price. The Tribunal held that there was no such obligation on the applicant landlord. In so holding, the Tribunal followed the decision of the Lands Tribunal in *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173, where it was held that the issues for determination were whether the ways in which the landlord had decided to carry out his obligation to provide the services were reasonable and, in the light of that determination, whether the costs incurred were reasonable.

18 It is important to underline the significance both of the limitations on the jurisdiction of the Tribunal in the context of the present application and of the determinations of the Tribunal on the three subsidiary issues. In particular, the effect of those limitations and determinations is, first, that a number of the grievances that the respondent leaseholders have aired in the course of correspondence are outside the jurisdiction of the Tribunal; and, secondly, that some of the evidence and arguments that the respondents have included in their documentation are not relevant to those matters that are within the jurisdiction of the Tribunal.

Service charge expenditure (excluding external redecoration)

19 Although the present application was originally based on a schedule of estimated service charge expenditure (totalling £52,723.50), in the light of the passage of time, the Tribunal invited the applicant to provide a revised schedule of proposed service charge expenditure for the period 24 June 2002 to 23 June 2003 based on actual costs already incurred and estimated costs to be incurred during the remainder of the relevant period.

20 The revised estimate of service charge expenditure was considerably lower than the original estimate because, following the refusal of the leaseholders to pay service charge demands, the applicant had ceased to provide certain services.

21 Each of the service charge items is considered in turn.

Insurance

22 Following the withdrawal of buildings insurance cover by the landlord's insurer, the insurance cover maintained by the landlord was limited to public liability insurance. The cost of that insurance was £252.60 for the relevant period and that figure was not challenged by the respondents. The Tribunal therefore holds that the cost was reasonably incurred.

General cleaning/caretaking

23 The level of general cleaning and caretaking services had been progressively reduced during the last quarter of 2002 and had ceased altogether on 12 December 2002. On the basis of invoices relating to the period 24 June 2002 to 12 December 2002, the applicant claimed that it had incurred costs of £4827.98 (which sum included £186 for the provision of electric light bulbs). No further costs would be incurred in the period to 23 June 2003.

24 The leaseholders submitted that the cleaning and caretaking services were of a poor standard; and that the caretaker had been spending some of his time doing other work on the Greenlawns development. The Tribunal accepted the evidence of the leaseholders that the standard of service had been less than might reasonably have been expected. However, the Tribunal was not persuaded that the applicant was proposing to include in the service charge costs relating to the caretaking services that were not properly to be included.

25 The leaseholders also made two, more general, submissions that applied not only to general cleaning and caretaking services but also to window cleaning and landscape maintenance: first, that the contract had not been subject to competitive tender for three years; and, secondly, that the contract could have been concluded at a lower cost. In support of the last submission, they put in evidence a quotation from HLM Midlands for the management of the Greenlawns development, which included the figure of £3,000 for communal cleaning for a full year. The Tribunal accepted the submission of the applicant that it was reasonable to conclude a single contract for the provision of the three categories of services referred to; and that it was reasonable to invite competitive tenders for those services only every three to four years. The Tribunal accepted the evidence that, when the contract was last put out to tender three years ago, the applicant had accepted the lowest of the tenders submitted. Furthermore, the Tribunal noted that the quotation from HLM Midlands related to cleaning only (and did not include caretaking services); and in any event the Tribunal reiterates its preliminary determination that the applicant landlord is not obliged to contract for the provision of services at the cheapest available price.

26 The Tribunal determines that a reasonable figure for the cleaning and caretaking services provided would be £4,000; and to the extent that the sums proposed to be included in the service charge for those services exceed that figure, the Tribunal determines that they would not be reasonably incurred.

Window cleaning

27 Window cleaning services had ceased to be provided after September 2002. On the basis of invoices relating to the period 24 June 2002 to the end of September 2002, the applicant claimed that it had incurred costs of £1085.70. No further costs would be incurred in the period to 23 June 2003.

28 The leaseholders submitted that the method of window cleaning adopted by the applicant had been unsatisfactory, being of a poor standard and causing damage to the window sills. The leaseholders repeated the general submissions referred to in paragraph 25 above and they put in evidence the quotation from HLM Midlands for the management of the Greenlawns development, which included the figure of £1,200 for window cleaning for a full year.

29 The Tribunal accepted the evidence of the leaseholders that the standard of service had been less than might reasonably have been expected. However, the Tribunal repeats its determination on the general submissions.

30 The Tribunal determines that a reasonable figure for the window cleaning services provided would be £750; and to the extent that the sums proposed to be included in the service charge for those services exceed that figure, the Tribunal determines that they would not be reasonably incurred.

Landscape maintenance

31 Landscape maintenance had ceased to be provided after September 2002. On the basis of invoices relating to the period 24 June 2002 to the end of September 2002, the applicant claimed that it had incurred costs of £740.25. No further costs would be incurred in the period to 23 June 2003.

32 The leaseholders submitted that the landscape maintenance contractors had not completed some work included in the contract specification. The leaseholders repeated the general submissions referred to in paragraph 25 above and they put in evidence the quotation from HLM Midlands for the management of the Greenlawns development, which included the figure of £1,250 for ground maintenance for a full year.

33 The Tribunal accepted that there may have been some minor departures from the contract specification but it was not persuaded that such departures required any adjustment of the figure for costs reasonably incurred. Furthermore, the Tribunal repeats its determination on the general submissions.

34 The Tribunal determined that the actual costs of £740 were reasonably incurred.

Electricity and lighting to the common areas

35 This service charge item covered the provision of electricity to the common areas (excluding the provision of electric light bulbs, which was included in the cleaning and caretaking services) and the monthly testing of the emergency lighting. This service had been maintained and would continue to be maintained throughout the period 24 June 2002 to 23 June 2003. On the basis of invoices relating to the period 24 June 2002 to the end of December 2002 (some of which the applicant had challenged), the applicant claimed that it had incurred costs of approximately £1,400; and it estimated that the figure for the full year would be £2,500. That figure was not challenged by the leaseholders; and the Tribunal determines that the estimated costs of £2,500 would be reasonably incurred.

General repairs

36 Whereas the original estimate of service charge expenditure for general repairs had been £15,000, the applicant had in fact limited expenditure on repairs to essential items such as the intercom system and security matters (which were essential for the continued validity of the public liability insurance policy). On the basis of invoices relating to the period 24 June 2002 to the end of February 2003, the applicant estimated that the figure for the full year would be £1,000. That figure was not challenged by the leaseholders; and the Tribunal determines that the estimated costs of £1,000 would be reasonably incurred.

Waste disposal

37 The applicant stated that costs under this service charge item were largely incurred in dealing with the problem of "fly-tipping" on the Greenlawns development. Although the local authority provided a free waste disposal service for individual leaseholders who contacted the authority personally, that service was not available where the landlord wished to remove items that had been deposited outside the properties of individual leaseholders.

38 On the basis of invoices relating to the period 24 June 2002 to the end of September 2002, the applicant claimed that it had incurred costs of £335.00. No further costs would be incurred in the period to 23 June 2003.

39 The leaseholders argued that some of those costs related to the removal of items discarded from properties that were owned by the freeholder and were not currently subject to any lease; and that such costs were not reasonably incurred. The Tribunal accepted that argument.

40 The Tribunal determines that a reasonable figure for the services provided would be £250; and to the extent that the sums proposed to be included in the service charge for those services exceed that figure, the Tribunal determines that they would not be reasonably incurred.

Drainage maintenance

41 On the basis of invoices relating to the period 24 June 2002 to the end of September 2002 (totalling £131.95) and estimating the cost of maintenance work carried out subsequently and further work that had been identified, the applicant estimated that the figure for the full year would be £300. That figure was not challenged by the leaseholders; and the Tribunal determines that the estimated costs of £300 would be reasonably incurred.

Grounds, roads and fencing

42 The applicant confirmed that no expenditure had been incurred or would be incurred under this service charge item.

Audit fees

43 On the basis of the fees incurred in previous years, the applicant had estimated that fees of £900 would be incurred in the period 24 June 2002 to 23 June 2003. In response to questions from the leaseholders, the applicant acknowledged that, given the likely reduced time required for the audit of the accounts, that figure would probably be less. On the other hand, that figure did not include the additional fee of £60 for the separate audit of the reserve fund accounts.

44 In the light of the applicant's acknowledgement, and the finding of the Tribunal that the separate fee for the audit of the reserve fund accounts was excessive, the Tribunal determines that a reasonable figure for the services provided would be £700; and to the extent that the sums proposed to be included in the service charge for those services exceed that figure, the Tribunal determines that they would not be reasonably incurred.

Management fees

45 The applicant claimed £8225 in respect of management fees. The applicant argued that this cost was reasonably incurred simply because it was the sum that the applicant had contracted to pay to the management company.

46 The leaseholders argued that the (admitted) low level of services during the year should necessarily be reflected in a lower fee for the management of those services. They also put in evidence the quotation from HLM Midlands for the management of the Greenlawns development. The quotation (which indicated a total figure of £23,000 for service charge expenditure for a full year) included the figure of £3,000 for management fees.

47 The Tribunal rejected the argument of the applicant that the contractual obligation to pay a given fee to the management company necessarily led to the conclusion that that cost was reasonably incurred. Such an argument, if sound, would logically apply to all costs incurred pursuant to contracts made with the actual providers of the services, for example those providing cleaning services and landscape maintenance. The argument was plainly not sound.

48 On the other hand, the Tribunal was not persuaded by the leaseholders' argument that the low level of services during the year should necessarily be reflected in a lower fee for the management of those services. Indeed, the evidence suggested that the management of the Greenlawns development during the year had not involved significantly less work than in previous years. In relation to the quotation from HLM Midlands, the Tribunal was not persuaded that figure quoted for management was a realistic figure for the work involved in the management of the Greenlawns development.

49 In conclusion, the Tribunal determines that the costs of £8225 in respect of management fees would be reasonably incurred.

Professional fees

50 This service charge item related to legal fees; and, on the basis of invoices received, the applicant claimed that the costs to be incurred during the period 24 June 2002 to 23 June 2003 would be £7847.17. However, that figure included fees charged in respect of the present application to the Leasehold Valuation Tribunal and also fees charged in connection with (or in contemplation of) proceedings under section 146 or 147 of the Law of Property Act 1925.

51 Pursuant to the jurisdiction of the Tribunal under section 20C, expressly reserved by the Tribunal following the withdrawal of the leaseholders' own application, the Tribunal determines that costs incurred by the applicant in connection with the proceedings before the Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders.

52 In relation to fees charged in connection with (or in contemplation of) proceedings under section 146 or 147 of the Law of Property Act 1925, the Tribunal finds that each of the respondent leaseholders has specifically and separately covenanted under paragraph 27 of the Sixth Schedule to the lease to pay such costs; and that the obligation of the leaseholders to reimburse the service charge expenditure is dealt with elsewhere in the lease (in the Eighth Schedule). The Tribunal holds that paragraph 17 of the Eighth Schedule does not affect its finding that the two categories of costs are the subject of separate and mutually exclusive provision. It follows therefore that costs incurred in respect of legal fees in connection with (or in contemplation of) proceedings under section 146 or 147 of the Law of Property Act 1925 do not form part of the service charge expenditure; and that the question whether those costs were or would be reasonably incurred is outside the jurisdiction of the Tribunal.

53 Making appropriate deductions for costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal and costs incurred in connection with (or in contemplation of) proceedings under section 146 or 147 of the Law of Property Act 1925, the Tribunal determines that a reasonable figure for the cost of professional fees would be £5,000; and to the extent that the sums proposed to be included in the service charge for those services exceed that figure, the Tribunal determines that they would not be reasonably incurred.

External redecoration

54 In addition to the general service charge expenditure considered in the foregoing paragraphs, the applicant also sought an advance payment of £1000 from each of the leaseholders in respect of proposed external repairs and redecoration.

55 The applicant had invited tenders for the work pursuant to a detailed specification and had received three tenders in July 2001. The applicant proposed to accept the lowest tender price of £16,820 for each of the four blocks in the Greenlawns development, although with the application of an uplift to take account of the passage of time and with the addition of VAT, the proposed cost (excluding professional fees) totalled approximately £22,000 for each block. The leaseholders had sought and put in evidence two further quotations, dated September 2002 and March 2003. So far as it is possible to calculate comparable prices from those quotations, the prices are £13,442 and £18,540 respectively.

56 In the light of the inconsistent (and apparently irreconcilable) evidence of the costs of external repair and redecoration (which is potentially compounded by the passage of nearly two years since the applicant received its tender prices), the Tribunal makes no finding as to what costs it would be reasonable to incur.

57 The Tribunal appreciates the respective concerns of both parties in relation to the proposed advance payment. On the one hand, the applicant is reluctant to commit itself to a significant project at a time when the leaseholders have demonstrated that they are prepared to withhold the payment of service charges (although it may be noted that on one interpretation of the lease the applicant is under an obligation to redecorate irrespective of whether it currently has the funds to finance that work). On the other hand, given the uneasy relationship between the parties, the respondents are reluctant to make payments for work which they see as long overdue but which, by definition, has not been started. Moreover, although at this stage the applicant is seeking only an advance payment, the Tribunal cannot ignore the uncertainty surrounding the tender price. However, despite those financial concerns, it is evident on the most cursory inspection that the condition of the properties is deteriorating rapidly; and that the deadlock must be broken.

58 In the circumstances, the Tribunal determines that a reasonable amount for the leaseholders to pay towards the costs of external repairs and redecoration before those costs are incurred would be £750. For the avoidance of doubt, in accordance with the wording of the Eighth Schedule, such advance payments must be reserved for the external works detailed in the specification that formed the basis of the invitation to tender in 2001.

Summary

59 The Tribunal determines that in respect of service charge expenditure for the period 24 June 2002 to 23 June 2003, the costs listed below were or would be reasonably incurred; and that, to the extent that the costs to be included in the service charge exceed that figure, the Tribunal determines that they would not be reasonably incurred:

Insurance	£252.50
Cleaning/caretaking	£4000.00
Window cleaning	£750.00
Landscape maintenance	£740.00
Electricity/lighting	£2500.00
General repairs	£1000.00
Waste disposal	£250.00
Drainage maintenance	£300.00
Grounds, roads and fencing	NIL
Audit fees	£700.00
Management fees	£8225.00
Professional fees	£5000.00
	£23,717.50

60 The Tribunal further determines that a reasonable amount for the leaseholders to pay towards the costs of external repairs and redecoration before those costs are incurred would be £750.

Signed ..... Nigel Gravells
(Professor Nigel P Gravells (Chairman))

Dated ..... 17 JUL 2003