SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/43UM/LAC/2006/0001

Decision of the Leasehold Valuation Tribunal on an application under Schedules 11 and 12 to the Commonhold and Leasehold Reform Act 2002 and Section 20C of the Landlord and Tenant Act 1985 as amended

Applicants:	Matthew Lawrence & Helen Quilliam (1)	No 7 Bankside
	C J Shrubb (2)	No 38
	Trevor Willis (3)	No 24
Respondent:	Treeview Trading Limited	
Re:	**7 Bankside, Woking, Surrey**	
Date of Application	13th February 2006	
Date of Inspection	None	
Date of Hearing	None	
Representing the Applicants	None	
Representing the Respondent	County Estate Management & Borneo Linnells (solicitors)	

Members of the Leasehold Valuation Tribunal:

	M J Greenleaves	Lawyer Chairman
Date of Tribunal's Decision:	5th June 2006	

Decision

1. Administration charges.
    a. The Tribunal had jurisdiction to consider the issues arising from the agents' letter dated 28th November 2005.
    b. There were no proven alterations to the elevations of the Property 7 Bankside Woking to require consent under clause 2(n) of the lease of the Property.
    c. There was no compliant demand for the administration charge.
    d. No administration as claimed in the letter of 28th November 2005 was payable.
    e. If such a charge had been payable it would be limited to £100 + VAT.
2. Costs. An Order is made that the Respondent's costs of and incidental to this application are not relevant costs recoverable as service charge.
3. Fees. The Tribunal makes no Order for reimbursement by the Respondent of the Original Applicants' Tribunal fee.

Reasons

4. This was an application made by Matthew Lawrence and Helen Quilliam (the Original Applicants) in respect of 7 Bankside, Woking for:
    a. determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) of the liability to pay an administration charge ;
    b. under Section 20C of the Landlord and Tenant Act 1985 (the 1985 Act) for limitation of costs recoverable by the landlord as service charge;
    c. for reimbursement of the Tribunal's fees from the Respondent under paragraph 9 of Schedule 12 to the 2002 Act and the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (the 2003 Regulations) made thereunder.
5. The other two applicants were joined in the application at their request by the Tribunal.
6. With the consent of the parties the matters were determined by the Tribunal, the Chairman (appointed by the Lord Chancellor to the panel provided for under Schedule 10 to the Rent Act 1977) sitting alone without hearing by virtue of the provisions of Regulation 13 of the 2003 Regulations.
7. The Tribunal had received documents, correspondence and written submissions from the Applicants and the Respondent all of which were considered in reaching the decisions above.
8. The issues arise from the installation of new windows in 7 Bankside, Woking (the Property) in or about March 2000 by predecessors in title of the Original Applicants.
9. The Property, which comprises a ground and first floor maisonette, was demised for a term of years by a lease (the lease) dated 21st February 1980 made between New Ideal Homes Limited (1) and Kevin Peter Mulhern (2).
10. The issues of law between the parties may be summarised as follows:

a. Do the installation of those windows constitute alterations to the elevation of the Property within the meaning of clause 2(n) of the lease such that licence to make alterations was required under that clause?

b. Did the cost of £250 + VAT referred to by County Estate Management (the Agent) in their letter of 28th November 2005 constitute a variable administration charge within the meaning of Schedule 11 to the 2002 Act?

c. If it did constitute such an administration charge,

   i. was notice duly given under paragraph 4 of Schedule 11 to the 2002 Act?

   ii. Was the amount of the charge reasonable?

11. Was the installation an alteration under Clause 2(n)?

a. The Original Applicants submit:

   i. In relation to the Agents' letter of 28th November 2005 that replacing windows was not a structural change.

   ii. The replacement windows do not constitute a change... in the elevation of the building, relying on the case of Bent vs. High Cliff Developments Limited which, they submit, held that replacement windows (albeit made of different materials) did not amount to a structural alteration.

   iii. The Agents for the Respondent showed their willingness to grant permission for the double glazed windows by submitting a licence form, so they cannot have any objection to the windows as such.

   iv. This was a "one-off" breach – if it was a breach at all – and they would therefore not be liable for that breach.

   v. Five and a half years have elapsed between the installation being carried out and the first letter from the Agents (28th November 2005). Having, since September 2003 paid ground rents half-yearly through to March 2006 which have been accepted, the Respondent has waived the right to claim any money.

b. The Respondent submits:

   i. The Bent case deals with the terms of the lease in that case in relation to the meaning of "Main Structure" and "structural alteration". It is therefore of little assistance in determining whether windows form part of the "elevation".

   ii. The windows do form part of the elevation of the Property and the replacement windows were an alteration to the elevation.

   iii. An elevation can mean "a particular side of a building".

   iv. The Bent case supports the contention that replacing windows of one material with those of another would have been a structural alteration.

   v. Compliance with a covenant to repair does not override the obligations of Clause 2(n).

c. The Tribunal's findings:

i. The Tribunal found that even if the new installation was in compliance with the covenant to repair, that fact does not override the covenant in clause 2(n).

ii. The Tribunal did not gain much assistance from the Bent case which had to determine issues arising from a covenant by the lessee "not to make any structural alterations to the property or alter its external appearance ....". It did not consider it of any significance that, in terms of a structural alteration, using different materials for windows would have been an alteration.

iii. In the present case the issue is whether alterations have been carried out in contravention of Clause 2(n) of the lease which provides "Not at any time .....without the licence in writing of the Landlord first obtained and upon payment of any fee required by the Lessor .... to make any alteration in the plan or elevation of the demised premises ....".

iv. The issues of definition in the present case relate to the meaning of "alteration" and "elevation" within the context of clause 2(n) and the lease as a whole.

v. The Shorter English Dictionary defines "elevation" in this context as "a frontal or side view, especially of a building". So it is the view of the Property, not the structure, with which this part of the Clause is concerned.

vi. That dictionary defines "alteration" as (1) the action of altering; (2) a change in character or appearance; an altered condition".

vii. The Tribunal did not consider that the word "alteration" in the context of this Clause can be construed as an "act of altering". It considers that "alteration" in this context means the resulting finished state.

viii. The Tribunal found that the terms of the covenant do not mean that no changes can take place but simply that the elevation should not be changed in character or appearance.

ix. The Tribunal is satisfied that windows must fall within the definition of elevation. The Tribunal however does not consider that even if different materials are used for new windows, the elevation is necessarily altered in character or appearance – it may not affect the elevation. The Respondent does not submit any evidence that the elevation was actually altered by the March 2000 installation and that is borne out by the fact that nothing was apparently noticed by the Respondent or its agents for over 5 years. When they did they said in their letter of 28th November 2005 that "your property appears to have had new windows installed without authorisation" but did not give any indication that they had any effect on the character or appearance of the elevation as it had been.

x. The Tribunal also noted Mr Shrubb's letter of 20th March 2006 to the Tribunal which indicates that the Respondent did not pursue the question of a licence although he used different materials for the windows. This suggests that the Respondent in 2004 was not concerned whether there was an exact match

with the previous windows whether as regards design or materials.

xi. The Tribunal has not been provided with any evidence as to the character or appearance of the elevation including its windows prior to the installation in March 2000. Bearing in mind the Respondent and its agents did not raise the issue for well over 5 years, there was either no change in character or appearance or, at most, it was negligible. It might be considered that the new installation would have constituted an improvement or might have been necessary because of the condition of the old windows, but they may have been installed to reduce maintenance work but actually have had no effect at all on the character or appearance of the elevation. The Tribunal cannot be sure but it is for the Respondent to show that there was actually an alteration to the character or appearance of the elevation and it has not done so.

xii. The Tribunal accordingly found that the Respondent's case was not made out and therefore there was no alteration to the elevations which would have required consent under Clause 2(n).

12. Did the cost of £250 + VAT referred to by County Estate Management (the Agent) in their letter of 28th November 2005 constitute a variable administration charge within the meaning of Part 1 of Schedule 11 to the 2002 Act?

a. The Applicants submit:

i. The request for a fee was for the grant of the licence and not for an alleged breach of the lease.

b. The Respondent submits:

i. The agents' letter of 28th November 2005 did not constitute a demand for an administration charge, but was an offer to avoid further legal action being taken by the Respondent;

ii. that the alleged breach was not failure to pay a sum of money but the failure to obtain the written permission of the Lessor;

iii. that the Respondent had no right to claim a fee for retrospective permission so the request for a fee for retrospective permission was not a payment the Original Applicants were obliged to make under the terms of the lease;

iv. therefore the sum was not an administration charge.

c. The Tribunal found:

i. The language of the letter of 28th November 2005 makes it plain that a licence (whose form was enclosed with the letter) would be granted if the fee of £250 + VAT was paid, threatening proceedings if application for a retrospective licence was not made.

ii. In their letter to the Tribunal of 23rd February 2006 the agents explain their position on the basis that the "administration charge" relates not to a simple grant of approval, as would be

the case had consent been sought prior to the works being undertaken, but rather in respect of the Landlord enabling the tenant to remedy a breach of lease due to undertaking works without consent".

iii. It would be straining the language of the first letter to suggest that the fee was anything other than one to enable grant of the licence to close the matter. It was perfectly plain to any reasonable recipient that a licence would be granted if the charge was paid.

iv. In the second letter there is acceptance that the fee was an administration charge albeit to enable remedying of a breach of covenant.

v. Paragraph 1 of Part 1 of Schedule 11 to the 2002 Act states that an administration charge is (inter alia) "an amount payable by a tenant which is payable directly or indirectly... for or in connection with the grant of approvals under his lease of applications for such approvals... [or]... in connection with a breach (or alleged breach) of a covenant ... in his lease"

vi. Paragraph 1 does not require there to be an expressed obligation in the lease to pay an administration charge in a breach situation. The question is whether it is "payable directly or indirectly in connection with a breach (or alleged breach)".The Respondent has effectively made the charge, which it accepts to be an administration charge, payable in *connection* with a breach or alleged breach by use of a threat of "further action". It was not simply an "offer" (as the Respondent suggests) that the lessee could freely decide whether to accept or reject.

vii. Whether the charge was for a licence or to enable the remedy of a breach, the Tribunal found it was an administration charge falling within paragraph 1 of Part 1 of Schedule 11. Further the Tribunal found that as the amount of the administration charge is not specified in Clause 2(n), nor calculated in accordance with a formula specified in the lease, it is a variable administration charge as defined by Paragraph 1(3) of that Part and the Tribunal therefore had jurisdiction to consider it under that Part.

13. <u>If it did constitute such a variable administration charge,</u>

a. <u>was notice duly given under paragraph 4 of Schedule 11 to the 2002 Act?</u>

b. <u>Was the amount of the charge reasonable?</u>

14. The Tribunal found:

a. The Respondent does not suggest there was such a notice. The Tribunal finds that there was no such notice so the Original Applicants would be entitled to withhold payment of administration charges under the terms of the 2002 Act

b. If a licence had been required, the Tribunal found that the cost of administration in connection with that would not have been £250 +VAT. The Landlord had sought to charge Mr & Mrs Shrubb the same

amount to include presumably consideration of all the documents requested in their letter of 5th July 2004. In the present case they did not request any such documents so plainly had much less work to do. The Tribunal considered a reasonable sum would have been not more than £100 +VAT and the amount payable limited accordingly.

15. While the information and evidence provided by Mr Shrubb is relevant to the present case, the Tribunal emphasises that the decision relates only to 7 Bankside, although it may have an impact on Mr & Mrs Shrubb's property.

16. Section 20C application. Taking account of its view of the matters in issue, the Tribunal decided that if the Respondent's costs of these proceedings were recoverable under the lease as service charge (and it does not find a provision to that effect), such costs would not be relevant costs to be taken into account and are therefore not recoverable as such.

17. However, the Tribunal did not consider that the issues were such that it would be appropriate to require the Respondent to reimburse the Tribunal's fees to the Original Applicants and accordingly decided to refuse that application.

18. The Tribunal made its decisions for the above reasons.

M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor