

## LEASEHOLD VALUATION TRIBUNAL

**CAM/26UE/NSI/2003/0006**

**Address of Property:** 207A Shenley Road, Borehamwood, Hertfordshire,  
WD61AT

**Applicant (Tenant):** Miss Wendy Whalley

**Applicant's Representative:** Mr Ian Gibson

**Respondent (Landlord):** Mr N Gorman, 31 Beech Drive, Borehamwood,  
Hertfordshire, WD61AT

**Respondent's Agent:** Mr DE Harding BSc MRICS of MacConvilles, 23  
Clerkenwell Close, London EC1R 0AA

**An application by a tenant for determination of reasonableness of service charge where costs already incurred (Section 19(2A) Landlord and Tenant Act 1985) in the financial year 2002/2003**

**An application by tenants for the limitation of service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)**

**Tribunal:** Mr JR Morris  
Miss M Krisko BSc (Est Man) BA FRICS  
Mr J Power MSc FRICS FCI Arb

**Date of Application:** 3<sup>rd</sup> February 2003

**Date of Hearing:** 28<sup>th</sup> August 2003

### **The Application**

1. On the 3<sup>rd</sup> February the Applicant applied to this Tribunal under section 19(2A) of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 for a determination as to whether costs incurred by way of service charge during the period 2002 to 2003 were reasonable. The Applicant had not paid the service charge as evidenced by a letter dated 12<sup>th</sup> December 2002 from the Respondent's Managing Agents demanding payment of the overdue costs from the Applicant and confirmed at the Hearing by the Respondent's Managing Agent.
2. The costs relate to works carried out by the Respondent are listed in brief in a notice by way of letter dated 8<sup>th</sup> August served on the Applicant pursuant to the provisions of Section 20 Landlord and Tenant Act 1985 as follows:
  1. Erect scaffolding
  2. Replace roof coverings
  3. Overhaul asphalt coverings
  4. Carry out external brickwork repairs

5. Carry out miscellaneous external repairs.
6. Carry out repairs to external walkways.
7. Relay section of the external access road.

The works are more particularly set out in a Schedule of Works and were available for inspection at the office of the Respondent's Agents.

The notice lists the tenders and identifies the tender accepted. It also states the estimated cost of the work together with professional charges as being:-

Costs of Works	£37,569.00
Professional Fees @ 15%	£5,635.35
Recovery of service charge @ 4%	£1,728.17
VAT @ 17.5%	<u>£7,853.19</u>
Total	£52,795.71

Amount to be paid by Applicant 10.416% £5,499.20

It was agreed by the parties that the Applicant had not paid the amounts demanded.

3. Together with the aforementioned application a further application was made, pursuant to section 20(c) of the Landlord and Tenant Act 1985, for an order that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of the property.

### **The Law**

4. A tenant or a landlord may make application to the leasehold valuation tribunal under s 19(2A) of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 to determine in relation to a service charge
  - a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
  - b) whether services or works for which costs were incurred are of a reasonable standard, or
  - c) whether an amount payable before costs are incurred is reasonable.

### **Description of the Property**

5. No 207A Shenley Road is a purpose built first floor flat over a shop with a further flat on the second floor and is within a three-storey building with a parade of shops with flats over. The part of the building, which is the subject of the works and service charge in issue comprises three shops and six flats. The building is built of brick and constructed circa 1930. Access to the first and second floor flats is either from the front to a path or via an easement (private right of way) over an access road, owned by the Respondent, at the rear of the property to the same path. The pathway is not part of the Applicant's demise and does not appear from the evidence presented to be part of the Respondent's freehold. The path leads to an open common staircase rising to a walkway above the shops. The flats on the first and second floors are entered via a shared lobby off which is the entrance door to the first floor

flat and from which stairs rise to the second floor flat. Each flat is the same size. The flats have no gardens or parking area although there is an open area off the walkway and in front of the entrance lobby where waste bins are kept. Each shop has a yard at the rear adjacent to the access road.

### **The Lease**

6. The freeholder is the Respondent who is also the immediate lessor/landlord. The Applicant is the lessee/tenant. The Applicant provided a copy of the Lease (the "Lease"). By virtue of Clause 2 (2) (a) (iii) of the Lease the lessee covenants to pay and contribute by way of additional rent a proportionate part of a number of items and in a particular: -  
The cost of maintaining repairing redecorating and renewing:
  - a) The structure of the Building including the main walls drains roofs foundations chimneystacks gutters and rainwater pipes.
  - b) The gas and water pipes electric cables and wires in under or upon the Building.
  - c) The main entrance passages pathways entrance hall lift and associated machinery staircases and landings and the boundary walls and fences of the Building including the cleaning and lighting of the entrance hall staircase lifts and landings.
  - d) All other matters and things used in common with other premises whether forming part of the Building or not including the establishment of a sinking fund in respect of the cost of any of these matters.
7. By virtue of Clause 2 (2) (b) of the Lease the contribution shall be a fair proportion of the total costs thereof and shall be ascertained and certified annually by a certificate by the Lessor's Managing Agent. The Lessee shall on the execution thereof pay £100 towards the contribution for the current year and thereafter on each quarter day pay a sum equal to one quarter of the amount estimated by the Lessor's Managing Agents for the year on account of such contribution and shall on the next quarter day following the presentation of the certificate pay the balance.

### **Documentation**

8. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
  - a) A copy of the lease to support what charges could be made and their calculation in relation to the subject property.
  - b) A list of tenants
  - c) A letter dated 12<sup>th</sup> December 2002 from the Respondent's Managing Agents demanding payment of the overdue costs from the Applicant.
  - d) A copy of the notice by way of letter dated 8<sup>th</sup> August from the Respondent's Managing Agents served on the Applicant pursuant to the provisions of Section 20 Landlord and Tenant Act 1985

summarising the works to be carried out and the estimated costs and contribution by the Applicant.

- e) The detailed specification/ Schedule of Works.
- f) Letter dated 19<sup>th</sup> August 2003 from Applicant to Respondent making observations regarding works and letter dated 12<sup>th</sup> December 2003 from Respondent's Agents to Applicant in reply.
- g) A Statement by the Applicant of why the costs were unreasonable
- h) The Respondent's statement in reply to the Applicant (presented at the Hearing)
- i) A copy of the Office Copy Entry of HM Land Registry Title Number HD189288 relating to the Freehold of the property. An uncoloured version was presented to the Tribunal on the day of the Hearing. At the Tribunal's request the Respondent's Managing Agents submitted a coloured copy to the Tribunal on 2nd September 2003. The Tribunal received the Applicant's observations on the coloured Office Copy on 15<sup>th</sup> September 2003.

Note: Except in relation to document i) above the Tribunal did not consider the parties further representations received after the Hearing.

### **Matters in Dispute**

- 9. The Applicant disputes the costs incurred in respect of the building works for the period 2002 to 2003 as being unreasonable as follows:
  - 1. Item 3.3 Asphalt Coverings in the Schedule of Works  
The walkway is not in such a bad state that it requires replacing and that the contractors carried out no work during the course of renovations. (Raised in written statement prior to Hearing)
  - 2. Item 3.6 Rear Access Way in the Schedule of Works  
The road belongs to Barclays bank Plc and therefore the Lessees should not have to pay for its repair. (Raised in written statement prior to Hearing)
  - 3. Item 3.7.1 & 3.7.2 Miscellaneous Works in the Schedule of Works  
The fence and gates are inadequate and ought not to be erected. The locks are impractical. (Raised in written statement prior to Hearing)
  - 4. Item 3.7.4 Miscellaneous Works in the Schedule of Works  
The external light does not work (Raised at the Hearing)
  - 5. Item 3.7.5 Miscellaneous Works in the Schedule of Works  
The steel mesh along the walkway handrail has not been replaced. (Raised at the Hearing)
  - 6. Item 3.7.6 Miscellaneous Works in the Schedule of Works  
The bin covers are unnecessary. (Raised at the Hearing)
  - 7. Item 3.8 Redecoration Works in the Schedule of Works  
The painting of the handrail has not been carried out properly. (Raised at the Hearing)
  - 8. The Applicant considered that some of the works referred to in the Schedule should have been carried out over a period of time rather than in a single operation.

## **Inspection**

10. The Tribunal inspected the property on the 28<sup>th</sup> August 2003 and it as described in paragraph 5 above. The Tribunal made an external inspection of the Building only as the matters in dispute related to external works. In respect of the matters in dispute the Tribunal noted that no work appeared to have been carried out in relation to Item 3.3 Asphalt Coverings referred to in the Schedule of Works. The tribunal noted that in relation to Item 3.7.1 & 3.7.2 Miscellaneous Works referred to in the Schedule of Works the fence and gates had been vandalised and were no longer effective. It was also noted that no replacement steel mesh had been affixed to the open concrete staircase and walkway balustrade and that elaborate bin covers had been installed. The steel mesh on the adjoining premises was seen to be in poor condition.

## **Hearing**

11. The Hearing took place on the 28<sup>th</sup> August 2003 and was attended by the Applicant, the Applicant's Representative and the Respondent's Managing Agent. The Chairman informed the parties that the role of the Tribunal was to assess whether the costs for works carried out during the period 2002 to 2003 were chargeable to the Applicant under the Lease and were reasonable and if not reasonable what charge would be reasonable in the light of the evidence presented to the Tribunal.

## ***The Applicant's Case***

12. The Applicant stated that the works carried out should have been undertaken during the whole term of the lease. She then went on to deal with each of the matters in dispute.
  1. *Item 3.3 Asphalt Coverings in the Schedule of Works*  
The whole walkway was renewed in 1992 and no repair work was now necessary. Before the work was carried out one of the Applicant's observations was that the walk way did not need to be renewed. The Applicant submitted that the contractors carried out no work on the walkway during the course of renovations and this was confirmation that none was needed. With specific reference to Item 3.3.2 (provision of new mastic asphalt edge and lead apron she said she did not know whether this work had been carried out or not.  
Estimated price in contract    £1,517.00
  2. *Item 3.6 Rear Access Way in the Schedule of Works*  
The Applicant had been under the impression that the access road belonged to Barclays bank Plc and if this was the case she did not see why the Lessees should have to pay for its repair. She said that she only had a right to walk over it to obtain access to her flat. There was no right to park on the access road. The Applicant, in observations received on the 15<sup>th</sup> September 2003 in relation to the coloured Office Copy of the Respondent's Freehold Title, acknowledged that the

Respondent owned the access way and was entitled to charge for its maintenance.

Estimated price in contract    £1,500

3.    *Item 3.7.1 & 3.7.2 Miscellaneous Works in the Schedule of Works*  
The Applicant stated that the fence and gates at each end of the pathway at the side of the building are inadequate and ought not to be erected. The Applicant had asked the local authority about these items and was informed that planning permission should be obtained for their erection but this had not been done. The Applicant said that the gates could not be locked because as far as she knew other persons in the building had a right to use the pathway. The gates were of inadequate construction as they were not able to withstand the vandalism to which they were subject. In addition the fence and gate at the rear of the property was ineffective because the yard at the rear of the shop at 207 Shenley Road was not enclosed allowing any person to enter the rear of the premises. The Applicant, in comments received on the 15<sup>th</sup> September 2003 in relation to the coloured Office Copy of the Respondent's Freehold Title, observed that the Respondent did not own the pathway and therefore was not entitled to charge the Tenant for the gates and fence.

Estimated price in contract	3.7.1 (Front gate)	£500.00
	3.7.2 (Back gate)	£600.00

4.    *Item 3.7.4 Miscellaneous Works in the Schedule of Works*  
The external light does not work  
Estimated price in contract    £120.00
5.    *Item 3.7.5 Miscellaneous Works in the Schedule of Works*  
The steel mesh along the walkway handrail has not been replaced and the Applicant said this was unsafe as children could fall from the walkway.  
Estimated price in contract    £360.00
6.    *Item 3.7.6 Miscellaneous Works in the Schedule of Works*  
No bin covers existed prior to the works and the Applicant submitted that these were awkward and unnecessary.  
Estimated price in contract    £1,440.00
7.    *Item 3.8 Redecoration Works in the Schedule of Works*  
The Applicant had noted that the rust had not been rubbed off the rails prior to painting and that the scaffolding had been attached to the railing and therefore she believed that part of the handrails had only been 'touched up' rather than painted properly as per the specification.  
Estimated price in contract for all painting    £720.00

### ***The Respondent's Case***

13.    The Respondent's Managing Agent stated that the fair proportions of the total costs of the works referred to under Clause 2 (2) (b) of the Lease were calculated on

the basis of the floor area of the properties. The six flats each have the same floor area and each tenant pays a contribution of 10.416% of the total cost. The floor areas of the shops are larger and each of these tenants pays a contribution of 12.5% of the total cost.

1. *Item 3.3 Asphalt Coverings in the Schedule of Works*  
The Respondent's Managing Agent stated that it had never been said that the asphalt needed relaying however there had been a number of blisters and lumps that had been 'ironed out'. Although it may appear to be undisturbed he assured the Tribunal and Applicant that work had been carried out although as mentioned the final accounts had not been agreed and it would be necessary to re-measure. The work may not have been as extensive as was referred to in the Schedule of works.
2. *Item 3.6 Rear Access Way in the Schedule of Works*  
The Respondent's Managing Agent produced an uncoloured copy of the Office Copy Entry of HM Land Registry Title Number HD189288 relating to the Freehold of the property, which he stated, showed that the access way belonged to the Respondent. The Tribunal received a coloured copy on 2nd September 2003. He referred to Clause 2 (a) iii (d) of the Lease stating that under the clause the Respondent was entitled to charge for the cost of maintaining repairing redecorating and renewing all matters and things used in common with other premises and that this included the access way.
3. *Item 3.7.1 & 3.7.2 Miscellaneous Works in the Schedule of Works*  
The Applicant's Managing Agent stated that the fence and gates at each end of the pathway at the side of the building had been found to be inadequate and were to be removed. However the Respondent had been entitled to erect them and charge the Tenant for the cost under the Lease by virtue of Clause 2 (a) iii (d). The fence and gate was for the benefit of the Tenant as it was intended to reduce vandalism.
4. *Item 3.7.4 Miscellaneous Works in the Schedule of Works*  
It was admitted that the external light did not work because another of the respondent's tenants who had in the past allowed the light to be connected to his electricity supply had now withdrawn his permission. Negotiations were currently underway with another tenant to reconnect the supply.
5. *Item 3.7.5 Miscellaneous Works in the Schedule of Works*  
The steel mesh along the walkway handrail had been in a poor condition similar to that of the adjoining premises and so had been removed. However it would be replaced as stated in the Scheme of Works.
6. *Item 3.7.6 Miscellaneous Works in the Schedule of Works*  
The bin covers had been installed as the lids of the bin had not always been replaced by tenants and rubbish had become sodden by rainwater or had blown out of the bins.

7. *Item 3.8 Redecoration Works in the Schedule of Works*  
So far as the Managing Agent was aware the painting of the hand rails had been carried out to the required standard as per the Schedule of Works.

**Determination of Application under Section 19(2A) of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996**

14. The Tribunal found as follows:

1. *Item 3.3 Asphalt Coverings in the Schedule of Works*  
Although at the inspection no work appeared to have been carried out on the asphalt coverings, new mastic asphalt edge or lead apron nevertheless the Tribunal accepted the Managing Agent's evidence that some work had been carried out. However the Tribunal were of the opinion that there would have been clear evidence of such repair and maintenance had work to the value of £1,517.00 been undertaken as stated in the contract. As there was no such evidence the charge was not considered reasonable and an amount of £500 is to be substituted in the contract price for removal of blisters, etc.
2. *Item 3.6 Rear Access Way in the Schedule of Works*  
The Tribunal found from the coloured copy of the Office Copy Entry of HM Land Registry Title Number HD189288 relating to the Freehold of the property received on 2nd September 2003, that the access way belonged to the Respondent. The Tribunal were concerned that Clause 2 (a) iii (d) of the Lease lacked clarity in relation to the cost of maintaining repairing and renewing the access way. However under the legislation in force at the time of the Hearing the Tribunal has no power to give a final ruling on the meaning of terms in the lease and it is arguable that the repair of the access way comes within the meaning "of all matters and things used in common with other premises". Accordingly the charge is allowed.
3. *Item 3.7.1 & 3.7.2 Miscellaneous Works in the Schedule of Works*  
The Tribunal found from the coloured copy of the Office Copy Entry of HM Land Registry Title Number HD189288 relating to the Freehold of the property received on 2nd September 2003, that the Respondent did not own the pathway and therefore *prima facie* was not entitled to charge the Tenant for the gates and fence. However under the Lease by virtue of Clause 2 (a) iii (d) the phrase "All other matters and things used in common with other premises whether forming part of the Building or not" arguably might include the erection of the gates. Even if this were the case the Tribunal found that the gates were of inadequate construction and that the fence and gate at the rear of the property were ineffective because the yard at the rear of the shop at 207 Shenley Road was not enclosed allowing any person to enter the rear of the premises. The works were conceded by the Managing Agent to be inadequate and stated the fence and gates were to be removed. It was decided that the work was not of a reasonable standard and that



the charge of £500.00 in clause 3.7.1 and £600 in clause 3.7.2 should be disallowed.

4. *Item 3.7.4 Miscellaneous Works in the Schedule of Works*  
The tribunal accepted that the light would be re-connected to the supply as soon as possible.
5. *Item 3.7.5 Miscellaneous Works in the Schedule of Works*  
The tribunal accepted that the steel mesh along the walkway handrail would be replaced as per the Schedule of Works.
6. *Item 3.7.6 Miscellaneous Works in the Schedule of Works*  
The Tribunal were of the opinion that the installation of the bin covers was an improvement and noted that there was no provision in the Lease for improvements. However the issue as to whether such work was reasonable or not could not be assessed by the Tribunal. The legislation had not included the consideration of improvements within the jurisdiction of the Tribunal.
7. *Item 3.8 Redecoration Works in the Schedule of Works*  
The Tribunal in its inspection had found the rails to be painted to a reasonable standard.
8. *Works should have been carried out over time*  
This did not relate to the reasonableness and standard of works carried out and so did not affect the Tribunal's decision. However, it is observed that although it is not unreasonable for a landlord to carry out such works in a single operation nevertheless there is provision in the Lease for the establishment of a sinking fund and if a charge had been made over time against such works rather than a single demand for payment then the Applicant might not have been prompted to question their reasonableness.

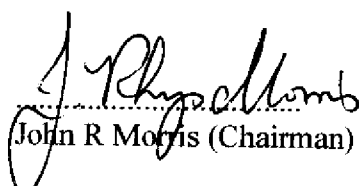
#### **Determination of Application under Section 20(c) of the Landlord and Tenant Act 1985**

15. Although the Tribunal found that only Items 3.3, 3.7.1 and 3.7.2 in the Schedule of Works were unreasonable nevertheless the Tribunal was of the opinion that the Respondent and the Respondent's Managing Agents could have settled matters raised by the Applicant without recourse to these proceedings.
16. The Tribunal were of the opinion that the Respondent and the Respondent's Managing Agents did not take advantage of the provisions of Section 20 Landlord and Tenant Act 1985 to deal timely or adequately with the matters raised by the Applicant in her letter of 19<sup>th</sup> August 2002 to Respondent. The Respondent's Agents did not reply until 12<sup>th</sup> December 2002 and did not address the issue of access to the pathway for other tenants or the covers over the bins, which became issues in these proceedings.

17. Neither the Respondent and the Respondent's Managing Agents had answered the issue concerning the ownership of the rear access way and its maintenance prior to the Hearing, although they could have done so by obtaining and forwarding to the Applicant coloured copies of the Office Copy Entry of HM Land Registry Title Number HD189288 relating to the Freehold of the property. The issue was not satisfactorily dealt with in this manner until the Tribunal received such copies on 2nd September 2003.
18. The Applicant and the Tribunal did not receive details of the Respondent's case in response to the Directions until the morning of the Hearing and the Respondent's Managing Agent did not appear to have papers to hand, such as a copy of the Lease, at the Hearing. The Tribunal were of the opinion that the Respondent could have dealt with matters more expeditiously.
19. The Tribunal therefore orders that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

### **The Summary**

20. The Tribunal determined that the reasonable service charge for Item 3.3 in the Schedule of Works is £500.00 and that no charge should be made for Items 3.7.1 and 3.7.2.
21. The Tribunal also orders that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of the property.

  
John R Morris (Chairman)

**Caution:** For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and only takes a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than a detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.