SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/24UJ/LSC/2006/0117

REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended ("the 1985 Act")

Applicant/Leaseholders : Mr Hugh Justin Hextall (Flat 4B), Mr James Le Friec (Flat 4C), and Mrs Ann Frampton (Flat 4D)

Respondent/Landlord : Ashby's Eling Brewery Co Ltd

Building : the building of which each Flat forms part

Flats : The four residential Flats in the Building, including the Premises

Premises : Flats 4B, 4C, and 4D, The Square, Pennington, Lymington, Hants, SO41 8GN

Date of Application : 31 October 2006

Date of Directions : 8 November 2006

Date of Hearing : 26 January 2007

Venue : Committee Room, Lymington Town Hall, Avenue Road, Lymington

Appearances for Applicant/Leaseholders: Mr Hextall

Appearances for Respondent/Landlord: Mr Philip Tucker

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr A J Mellery-Pratt FRICS, and Mr J Mills

Date of Tribunal's Reasons : 30 January 2007

Introduction

1. This Application by the Applicant/Leaseholders is under section 27A of the 1985 Act, namely for the Tribunal to determine the payability of service charges for the year to the 30 June 2006 relating to insurance, management charges, sundry repairs, and major works to the exterior

staircase, and the payability of an estimated service charge for the year to the 30 June 2007

2. The Applicant/Leaseholders have also made an application under section 20C of the 1985 Act for an order that the costs incurred by the Respondent/Landlord 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/Leaseholders ("the section 20C application")

3. On the 8 November 2006 the Tribunal gave directions

4. The hearing of the application took place on the 26 January 2007

5. The definition of "service charge" for the purposes of the 1985 Act has been extended by paragraph 7 of Schedule 9 to the Commonhold and Leasehold Reform Act 2002 ("CLARA 2002") to mean an amount payable not only for services, repairs, maintenance, or insurance or the landlord's costs of management, but also now for improvements. The Tribunal's jurisdiction to consider the payability of a service charge applies whether or not any payment has been made (section 27A(2) of the 1985 Act)

6. The "new" section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements
(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

7. The material parts of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations")are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall-

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify- (i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Para 11

(1) Where, within the relevant period, a nomination is made by a recognised tenants'

association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(10) The landlord shall, by notice in writing to each tenant and the association (if any)-

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify- (i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.

Documents

8. The documents before the Tribunal are the Application and supporting papers at pages 1 to 64

of the Tribunal's bundle

Inspection

9. The Tribunal inspected the exterior of the Building on the morning of the hearing on the 26 January 2007. Mr Hextall and Mr Tucker were present

10. The Building comprised the right-hand section of a semi-detached property. Flat 4A was on the ground floor at the front. Flat 4B was on the ground floor at the rear, with access at the right-hand side of the Building. Flats 4C and 4D were on the first floor, with access via the external staircase referred to in the application, which led to an external landing. Flat 4C was at the front of the Building, apparently over Flat 4A, and Flat 4D was at the rear of the Building, apparently over Flat 4B

11. The staircase was made of wood. The steps appeared to be of hardwood, whilst the strings at the side appeared to be of treated softwood. The rising banisters up the steps at each side were painted white. A section of the first-floor level banister adjacent to the landing appeared to have been constructed at the same time as the steps and rising banisters. The new construction appeared to be in reasonably good condition. The decorative condition of the rest of the first-floor level banister was poor, with flaking paintwork evident

Preliminary and procedural matters

12. Mr Hextall stated at the hearing that he had spoken to Mrs Frampton, and that she was unable to attend the hearing. Mr Le Friec was not attending either

13. In the letter dated the 8 December 2006 at page 26 of the Tribunal's bundle, the Respondent/Landlord had stated that the Respondent/Landlord acquired the freehold of the property in January 2005, and that Mr Hextall became the lessee of Flat 4B in July 2005. At the hearing, Mr Hextall stated that he had purchased the Lease of Flat 4B on the 7 July 2005 from Ms Cracknell

14. Mr Tucker stated that he was a director of the Respondent/Landlord, and that the Respondent/Landlord was not registered for VAT

The Leases

14. The parties agreed at the beginning of the hearing that the Premises were held on Leases in similar terms to the Lease of Flat 1c to Ms Cracknell at pages 16 and 61 of the Tribunal's bundle

15. For the purposes of these proceedings the material parts of the Lease of Flat 1c are as follows :

Clause 2

The Lessee hereby covenants with the Lessor that the Lessee will observe and perform the obligations on the part of the Lessee set out in the Sixth Schedule hereto

Clause 3

The Lessor hereby covenants with the Lessee that subject to and upon the conditions expressed in the last clause of the Seventh Schedule hereto he will observe and perform the obligations on his part set out in that Schedule

First Schedule – The Estate

All that ……land situate in 1 The Square Pennington Lymington Hampshire together with the shop and two self-contained Flats……

Second Schedule – The Reserved Property

First all those the boundary walls and fences belonging to the estate and the drives paths and forecourts forming part thereof and such other parts thereof which are used in common by the Owners or occupiers of ant two or more of the Flats and secondly all those the main structural parts of the Building……including the roof foundations main walls and external parts thereof (but not the window frames nor glass of the windows as bound the Flats) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one Flat and the joints [sic] and beams to which are attached any ceilings or floors and thirdly the external staircase and communal part of the balcony leading to the Flats which for the purpose of identification only is coloured blue on Plans 1 and 2 hereto and fourthly (for maintenance purposes only) that part of the balcony which for the purposes of identification only is edged blue on Plan 2 hereto (if applicable)

Third Schedule – The Premises

All that Ground Floor Flat forming part of the Estate and being one of the Flats and known as 1c the Square Pennington Lymington Hampshire……together with the floor and ceilings of the said Flat and together with all cisterns tanks sewers drains pipes wires and conduits used solely for the purpose of the said Flat but no others except and reserving from the demise the main structural parts of the building of which the said Flat forms part including the roof foundations main walls and external parts thereof (but not the window frames nor the glass of the windows of the said Flat nor the interior faces of such of the external walls as bound the said Flat) and the joists or beams to which are attached any ceilings or floors……

Fourth Schedule – Rights included in the demise

1. *The right in common with the Lessor the Owners and occupiers of the*

other Flats and all others having the like right to use for the purposes only of access to and egress from the Premises all such parts of the reserved Property as afford access thereto……

Sixth Schedule - Covenants by the Lessee with the Lessor

4. *To pay all costs charges and expenses…… incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925……*

14. *(a) To pay to the Lessor twenty per cent of the annual cost of carrying out or providing such maintenance repairs and services on the Estate and other matters specified in the Seventh Schedule*
(b) On the 1 day of July in each year the Lessee shall pay to the Lessor the estimated liability under paragraph (a) hereto provided that upon the date hereof the Lessee shall pay the sum of ……£200 in any event and in respect of each subsequent year such amount as the Lessor shall reasonably require
(c) The annual cost shall be calculated on the 1 day of July in each year and as soon as the annual cost shall have been ascertained the Lessee shall pay the balance to the Lessor provided that (and without prejudice to the generality of the foregoing) the Lessor shall be entitled (i) to include in the said costs a reasonable management fee for himself for the carrying out of the provisions of the Seventh Schedule hereto and (ii) to charge to the Lessee individually an additional reasonable fee [in respect of additional work done by the Lessor because of the Lessee's default]

Seventh Schedule - Covenants on the part of the Lessor

1. *To maintain repair redecorate and renew the Reserved Property ……*

3. *To insure the Estate……and to produce to the Lessee on demand the policy of insurance and the receipt for the last premium paid……*

6. *On an annual basis to keep proper books of account of all costs charges and expenses incurred by the Lessor in carrying out his obligations hereunder and to have the same audited by a competent Accountant and to obtain from him such Certificate as may from time to time be required by the Lessor for the purpose of establishing or vouching his expenditure or provisions for his obligations hereunder and the contributions due from the Flat Owners and supply a copy of the said accounts to each Flat Owner on an annual basis*

7. *Generally to maintain and superintend the Estate for the mutual benefit convenience and comfort of the Lessee and Owners and occupiers of the Flats including the monthly cleaning of the outside windows of the Flats*

11. *If and so far as any moneys received by the Lessor from the Lessee during any year by way of contribution towards the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule the Lessor shall hold those moneys upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely*

16. The parties agreed at the hearing that Flat 1c was Mr Hextall's Flat, and was now known as Flat 4B, and that there had been no deed of variation of the Lease

17. Mr Tucker stated at the hearing that he had previously thought that each lessee shared all the expenses of the building equally, and that Mr Hextall's share was accordingly 25%, but now accepted, on reading clause 14(a) of the Lease that Mr Hextall's service charge proportion was only 20% rather than 25%

18. Neither Mr Hextall nor Mr Tucker had brought to the hearing copies of the coloured plans referred to in the Second Schedule of the Lease

The section 27A application

Year ending the 30 June 2006

19. The figures challenged by the Applicant/Leaseholders in the application form page 7 of the Tribunal's bundle were insurance £160, management charge £117.50, sundry repairs £122.50, and major works (staircase) £500

20. The figures in the "certificate of expenditure" in the letter from the Respondent/Landlord dated the 1 July 2006 at page 51 of the Tribunal's bundle were insurance £176.71, management and accountancy charge £117.50, and maintenance charge £522.80

21. The Applicant/Leaseholders stated in the application form page 7 of the Tribunal's bundle that they wished the Tribunal to decide :

    a. whether the Respondent/Landlord had consulted the Applicant/Leaseholders about the major works to the staircase

    b. whether the Respondent/Landlord had provided details of repairs and costs

    c. whether the Respondent/Landlord had provided evidence of insurance

    d. whether the Respondent/Landlord had provided evidence of managing the Building (staircase unsafe and replacement arranged by Applicant/Leaseholders)

    e. whether there had been a proper application of the management charge

f. whether the Respondent/Landlord had provided accounts or details of the property fund

g. whether the Respondent/Landlord had carried out its responsibilities under paragraphs 3, 6, 7, and 11 of the Seventh Schedule to the Lease

h. how much the Respondent/Landlord was therefore entitled to pursue the Applicant/Leaseholders for

22. The Applicant/Leaseholders also stated that :

a. the Respondent/Landlord had not been to the Building for the last 2 years

b. the Respondent/Landlord had failed to follow the proper procedure or provide any evidence to support its invoices

c. there was some confusion about changing the number of the Building, which used to be 1, as in the Lease, but was now 4

23. However, at the hearing, Mr Hextall confirmed that insurance and sundry repairs were not now in issue before the Tribunal, and that the only matters which were still in issue were maintenance charge £522.88 and management and accountancy charge £117.50

Maintenance charge £522.88

24. In the letter dated the 3 October 2005 at page 57 of the Tribunal's bundle, Blanchards Solicitors stated to Mr Hextall that no notices had been received with the contract papers or during negotiations with the seller's solicitors, and that the seller's solicitors had stated that their client did not have the notices and did not recall receiving them

25. In the letter dated the 28 October 2005 at pages 58 to 59 of the Tribunal's bundle, Mr Hextall stated that :

a. he was enclosing one quarter of the insurance as required by the Lease

b. CLARA 2002 and the 1985 Act set out requirements of reasonableness and prior consultation with leaseholders

c. neither he, nor Mrs Cracknell, nor the other lessees, had received a notice of major repair works from the Respondent/Landlord prior to the replacement of the staircase

d. failure to consult, without a dispensation from the Tribunal for urgent works, limited the recovery to the statutory limit of £250

26. In the letter dated the 9 November 2005 at page 49 of the Tribunal's bundle, the Respondent/Landlord stated that the Respondent/Landlord found it hard to believe that neither Mr Hextall nor Mrs Cracknell had received the notice of intended works dated the 3 May as Mrs Cracknell had replied to the notice on the 8 May

27. In the letter dated the 27 December 2006 [which Mr Tucker confirmed at the hearing should have read "2005"] at page 50 of the Tribunal's bundle, the Respondent/Landlord stated that :

    a. the estimate of service charges for the "current" year were insurance £160, staircase replacement £500, management charge £117.50, and sundry repairs £122.50, making a total of £900

    b. the statutory procedures with regard to the staircase were followed, and the original notices of repair were served on the lessees on the 3 May

28. In the letter dated the 8 December 2006 at page 26 of the Tribunal's bundle, the Respondent/Landlord stated that :

    a. the sum expended on the replacement of the external staircase was £2,091.50, of which the Applicant/Leaseholders' share was one quarter, £522.88

    b. those repairs were emergency repairs and were carried out at the request of the lessee of the upstairs Flat as she could not gain access to her Flat

    c. copies were attached (at pages 38 to 40 of the Tribunal's bundle) of the builder's quotation (from CMF Builders dated the 5 April 2005) and invoice (from CMF Builders dated the 11 August 2005 for £1,780 plus VAT of £311.50, making a total of £2,091.50)

29. In the letter dated the 7 January 2007 at pages 42 to 43 of the Tribunal's bundle, Mr Hextall stated that :

    a. the Respondent/Landlord had failed to comply with the CLARA 2002 requirements for consultation, although the Respondent/Landlord was now saying that they had followed the requirements

    b. the carpenter who had built the staircase had told Mr Hextall that the true worth of the 2-day job was nearer to £1,000 than the £2,091.50 paid; the failure to consult had meant that the Applicant/Leaseholders had been given no notice of the work, and had been unable to compare or choose a competitive quote, and the amount actually paid was excessive

    c. Mrs Frampton had requested that the stairs be replaced because the stairs were in such poor repair that 2 steps had rotted away and the postman refused to deliver mail to the top flats because it was unsafe, but the requests went unanswered; in desperation Mrs Frampton organised a local builder to send a quote to the Respondent/Landlord; the Respondent/Landlord did not visit the Building; and the builder contacted Mrs Frampton on a number of occasions because he had not been paid within the 7 stated days by the Respondent/Landlord

30. In the letter dated the 7 January 2006 [sic] at page 44 of the Tribunal's bundle, Mrs Frampton stated that one of the steps in the stairs leading up to her Flat had rotted completely and had caved in. A guest walking down was lucky not to be injured. Mrs Frampton's young son was finding it very difficult to get in and out of the Flat. The post office were refusing to deliver

mail. She tried over several weeks to contact Mr Tucker of the Respondent/Landlord. The original landlord, Tim Baker, had not informed all the Flat owners of the name of the new freeholder, so she had difficulty finding out whom to go to. Eventually she spoke to Mr Tucker. He was unsympathetic and thought it was not his responsibility. Eventually he agreed to pay if she got a quote. She got a quote from local builders CMF for £1,780. Mr Tucker agreed to pay if she instructed the builders which she did. The staircase was replaced in April 2005. A few weeks later Mr Tucker sent the Applicant/Leaseholders an invoice for the increased maintenance amount to cover the cost. Mrs Frampton tried unsuccessfully to contact him several times. He sued her for the extra costs. She lost and had to pay the extra costs. Mr Tucker never visited the Building or showed any interest in the Flats

31. Mr Hextall said at the hearing that he had spoken to Mrs Frampton in September 2005 and to Mr Le Friec in either September or October 2005, and neither of them had received any consultation notices. Mr Hextall had not spoken to the owner of the fourth Flat, the former freeholder Mr T Baker. Mr Hextall also said that the cost of the staircase works had been far greater than necessary. He had spoken to the person who had built it, who had said that it would have been no more than £1,000

32. There was no cross-examination

33. In answer to questions from the Tribunal, Mr Hextall said that he had not spoken to Mr Finch at CMF (referred to in the estimate and invoice at pages 38 to 40 of the Tribunal's bundle), but to the person who had done the work. Mr Hextall did not know his name, but he had known the cost of the materials used and his own daily rate. The work had been done in late July or early August, after Mr Hextall's purchase of Flat 4B

34. Mr Tucker said in evidence that he had consulted the lessees before the work had started. He had sent each lessee a letter on the 3 May 2005 with a copy of the CMF quotation. Mr Tucker sought to produce a letter of that date to Ms Cracknell and of her reply dated the 8 May 2005

35. The Tribunal arranged for copies of the letters to be made available to Mr Hextall and to the Tribunal, so that the question of their admissibility could be considered

36. Mr Hextall objected to the letters being admitted in evidence. He had not seen them before despite asking for them and despite the question of consultation being raised in correspondence

37. Mr Tucker said that he had given evidence about consultation, and the letters were confidential between the Respondent/Landlord and Ms Cracknell so far as Mr Hextall was concerned

38. After considering all the circumstances, including the fact that Mr Hextall had been taken by

surprise in not having had the opportunity of seeing the letters before, but, as the Tribunal found, that the 2 letters were relatively short and straightforward, and that their existence and general description, if not their detailed content, had been disclosed in the correspondence (at pages 49 and 50 of the Tribunal's bundle), the Tribunal decided to admit the letters in evidence, as being the only contemporary written evidence about a major issue before the Tribunal, and numbered the letters 63 and 64 respectively in the Tribunal's bundle

39. Mr Tucker said that similar letters to that of the 3 May had been sent to each of the other lessees, but that he did not have with him at the hearing copies of those other letters. There had been no other consultation letters. He had received no responses from lessees except the letter dated the 8 May from Ms Cracknell

40. Mr Tucker did not accept that the CMF bill was excessive. The letter from Ms Cracknell stated that she would be seeking cheaper quotes, and the absence of any further correspondence from her indicated that she had been unable to find one. Mr Tucker had phoned builders in Yellow Pages, and, although he had not received any written quotes, they had all given him verbal figures of about £2,000. At the time Mr Tucker had had numerous telephone conversations with Mrs Frampton who had said that she had been unable to obtain any cheaper quotes either. He and Mrs Frampton had both thought that the CMF quote was expensive but in the absence of a cheaper quote had decided to accept it

41. In cross-examination Mr Tucker said that he had not provided Mr Hextall with a copy of the letter of the 3 May 2005 because it had been confidential to the previous lessee, and had not been relevant to Mr Hextall. The Respondent/Landlord had not obtained other quotes for the staircase because Ms Cracknell had said that she was obtaining them. It was not true that he had spoken to Mrs Frampton only once

42. In answer to questions from the Tribunal, Mr Tucker said that he realised that the letter of the 3 May 2005 did not comply to the letter with the consultation requirements referred to in section 20 of the 1985 Act, but he thought that the letter was sufficient to comply. He had inspected the property before he had ordered the works. He had given the go-ahead for the works to be done in June 2005. So far as he was aware, CMF had replaced the existing staircase with a new one. He had inspected the works before paying CMF's invoice. The flaking paintwork which had been apparent during the Tribunal's inspection had not been apparent then

43. In submissions, Mr Tucker said that he accepted that the consultation procedure had not been exactly in line with the statutory procedure, but the works had become more and more urgent and quotes had been difficult to find. Eventually the Royal Mail had refused to use the steps. The work had become extremely urgent. He did not know the exact date when Mrs Frampton had first contacted him. He did not think it was as early as Mrs Frampton had suggested in her letter at page 44 of the Tribunal's bundle. The Respondent/Landlord had not bought the Building until January 2005, but he accepted that she would have informed him that the steps were broken in early 2005. So far as the statutory procedure was concerned, he was aware that

there was a requirement to obtain 2 quotations, but the works had become an emergency before they had been able to obtain a second quote. He had not been aware that the statutory procedure required 2 notices. Mr Tucker accepted that, apart from the question of consultation, Mr Hextall's service charge share of the CMF invoice for £2,091.50 was 20%, namely £418.30, rather than the £522.88 referred to in the Respondent/Landlord's letter of the 1 July 2006 at page 51 of the Tribunal's bundle

44. Mr Hextall said that he had not been provided with any written evidence of consultation before now. The consultation process had been incomplete because there was only one notice and only one quote. The works had only become an emergency because of the failure to manage the property properly, because the problem with the staircase had been going on for at least 6 months. So far as the amount of CMF's invoice was concerned, the man who had done the work had said that the cost should have been less. Also, even though CMF themselves had noted (in their quote at page 38 of the Tribunal's bundle) that the previous staircase had been of a construction which was more suitable for internal use, the new staircase was also made out of softwood and was now showing the effects

Management and accountancy charge £117.50

45. In the letter dated the 28 October 2005 at pages 58 to 59 of the Tribunal's bundle, Mr Hextall stated that at no time did a representative of the Respondent/Landlord visit the Building despite the staircase being extremely hazardous and missing rungs and repeated requests by the Applicant/Leaseholders for action by the Respondent/Landlord. This was in breach of paragraph 1 of the Fourth Schedule to the Lease. Mrs Frampton had eventually organised the work. The Respondent/Landlord had failed to maintain and superintend the Building under paragraphs 1 and 7 of the Seventh Schedule. The Respondent/Landlord was not accessible by telephone in case of urgent need

46. In the letter dated the 7 January 2007 at pages 42 to 43 of the Tribunal's bundle, Mr Hextall stated that the Respondent/Landlord had :

    a. failed to provide access or details of the accounts, including any details regarding a trust or reserve account, despite requests since the 19 September 2005
    b. failed to provide details of invoices for maintenance; the only work carried out by the Respondent/Landlord had been the external staircase
    c. failed to show any details of management activity or specific charges
    d. charged £117.50 for the year ended the 30 June 2005 when the 20% provision referred to in paragraph 14(a) of the Sixth Schedule to the Lease worked out at £30.68

47. Mr Hextall said at the hearing that the figure was not a reasonable figure. The Respondent/Landlord had not managed the Building well. There was little evidence of any management. When the stairs collapsed, the Respondent/Landlord had waited for one of the

accordance with the quote

b. the lack of any alternative cheaper quotations before the Tribunal, even from Ms Cracknell, despite the reference in her letter (at page 63 of the Tribunal's bundle) to obtaining further quotes

c. Mr Tucker's oral evidence that he had phoned builders in Yellow Pages, and, although he had not received any written quotes, they had all given him verbal figures of about £2,000

d. the fact, as the Tribunal finds, that the work appeared to the Tribunal on inspection to have lasted reasonably well, and that the flaking paintwork appeared, as confirmed by Mr Hextall and Mr Tucker during the Tribunal's inspection, to have been on parts of the banister which had not been part of the works carried out by CMF in 2005

67. Having taken all the circumstances into account, the Tribunal finds that the cost of the staircase repairs, namely £2,091.50, was a reasonable cost

68. Mr Hextall's service charge proportion under paragraph 14(a) of the Sixth Schedule to his Lease at page 20 of the Tribunal's bundle is 20%

69. Apart from the question of consultation pursuant to section 20 of the 1985 Act, the Tribunal would have found that Mr Hextall's service charge proportion of the cost would have been £418.30, namely 20% of £2,091.50, as conceded by Mr Tucker at the hearing

70. Again, apart from the question of consultation, if the other Applicant/Leaseholders, namely Mr Le Friec and Mrs Frampton, had also had service charge proportions of 20% in their leases, then the Tribunal would have made a similar finding in their respective cases. However, Mr Tucker did not make a concession in that respect at the hearing, and, in the absence of copies of their leases or any other documentary or oral evidence from either of them, the only finding which the Tribunal could have made in their cases would have been that the amounts payable would have been their respective service charge proportions of £2,091.50

71. However, in relation to consultation, the Tribunal finds that :

a. the letter at page 62 of the Tribunal's bundle did not satisfy the requirements in the 2003 Regulations because :

- it did not comply with paragraph 8 of Schedule 4 Part 2, in that, for example, it did not specify a period during which, or a date by which, any lessee's observations had to be sent to the Respondent/Landlord
- it did not comply with paragraph 11 of Schedule 4 Part 2, in that, for example, it enclosed only one estimate, and, again, did not specify a period during which, or a date by which, any lessee's observations had to be sent to the Respondent/Landlord

b. there was no other notice or letter sent by the Respondent/Landlord to the lessees, in

breach of the requirement in the 2003 Regulations for there to be a notice under paragraph 8 of Schedule 4 Part 2, followed by a subsequent notice under paragraph 11

c. the Respondent/Landlord had accordingly not complied with the consultation requirements

d. the Tribunal has taken account of Mr Tucker's submission that it was reasonable not to have complied with the consultation requirements because the works were an emergency, but the Tribunal finds that

- the responsibility for repairing the staircase fell on the Respondent/Landlord under the Lease by virtue of paragraph 1 of the Seventh Schedule and the definition of "the Reserved Property" in the Second Schedule (pages 21 and 15 respectively of the Tribunal's bundle)
- on Mr Tucker's own evidence, the Respondent/Landlord had been aware of the problems with the staircase since, at the latest, some 6 months before the works were actually carried out
- the Respondent/Landlord did not obtain a written quote, but relied on Mrs Frampton to obtain one
- on Mr Tucker's own evidence, the Respondent/Landlord did not give instructions for the work to be carried out until June 2006
- any emergency had, therefore, at the very least, been contributed to by the Respondent/Landlord
- there is no application before the Tribunal pursuant to section 20(1)(b) of the 1985 Act to dispense with the consultation requirements
- even if there had been such an application, the Tribunal would not have been minded to make an order dispensing with the consultation requirements for the reasons already given in the preceding points under this paragraph of these reasons

72. Having considered all the circumstances, the Tribunal finds that the consultation requirements have not been met, and that, pursuant to section 20 of the 1985 Act, the relevant contributions of the Applicant/Leaseholders to the cost of the staircase works are accordingly limited to £250 each

Management and accountancy charge £117.50

73. The Tribunal finds from Mr Tucker's own evidence that the Respondent/Landlord figures in this respect were based on an estimated charge for the Building of £500. As conceded by Mr Tucker at the hearing, Mr Hextall's service charge proportion of that figure would have been £100, namely 20% of £500, rather than the £117.50 demanded

74. The Tribunal finds from its collective knowledge and expertise that a management charge of £500 would be a reasonable charge for managing the Building properly during the year in

question

75. However, the Tribunal is not satisfied, on the evidence before the Tribunal, that the Respondent/Landlord did manage the Building properly during that year

76. In making that finding the Tribunal has taken into account Mr Tucker's evidence that the Respondent/Landlord had carried out a considerable amount of work, as detailed earlier in these reasons

77. However, the Tribunal finds that :

    a. the emergency with the staircase had, at the very least, been contributed to by the Respondent/Landlord, for reasons already given

    b. the Tribunal accepts, as straightforward and persuasive, and unchallenged in that respect by Mr Tucker, the evidence in Mrs Frampton's letter (at page 44 of the Tribunal's bundle) that she, rather than the Respondent/Landlord, obtained the quote from CMF

    c. on Mr Tucker's own evidence, the Respondent/Landlord arranged the insurance of the Building through a broker, rather than the Respondent/Landlord taking a "considerable amount of time to obtain the best insurance quotation for the lessees" as initially suggested in oral evidence by Mr Tucker

    d. on Mr Tucker's own evidence, no copy of the insurance policy had been supplied to Mr Hextall before the start of these proceedings, despite Mr Hextall's requests, and despite the Respondent/Landlord's obligations to do so in paragraph 3 of the Seventh Schedule of the Lease (at pages 21 and 22 of the Tribunal's bundle)

    e. the "certificate of expenditure" forming part of each of the letters at pages 45 and 51 of the Tribunal's bundle did not comply with the Respondent/Landlord's obligation to prepare and serve on the lessees accounts of expenditure on the Building pursuant to paragraph 6 of the Seventh Schedule of the Lease (at page 22 of the Tribunal's bundle), in that in each case the "certificate" simply set out figures which purported to be Mr Hextall's share of that expenditure

    f. on Mr Tucker's own evidence, the Respondent/Landlord had not supplied Mr Hextall with a telephone number to enable Mr Hextall to telephone Mr Tucker, which the Tribunal would have expected in the case of a properly managed Building

    g. on the evidence before the Tribunal, the Tribunal is not persuaded that the Respondent/Landlord had carried out any more than simply the bare minimum of management work in the year in question, let alone the "considerable" amount of work contended for by Mr Tucker

    h. the charge of £500 was accordingly not reasonable

    i. relying on the Tribunal's collective knowledge and expertise, the Tribunal finds, on the evidence before the Tribunal, that a reasonable charge for the management and accountancy work actually done by the Respondent/Landlord in the year in question

would have been no more than £200

j. the service charge payable by Mr Hextall in relation to this item is therefore £40, namely 20% of £200

k. the service charges payable by Mr Le Friec and Mrs Frampton in relation to this item are their respective service charge proportions of £200

Year ending the 30 June 2007

Estimated service charge £400

78. Having considered all the evidence in this respect in the round, the Tribunal finds that

a. on Mr Tucker's own evidence, as clarified, the estimated service charge was based on a figure for the whole Building of £1,600, made up as follows :

estimated insurance	£800
management and accountancy charge	£500
maintenance works	£300
total	£1,600

b. the Tribunal accepts Mr Tucker's evidence, which was unchallenged by Mr Hextall, that the insurance premium for the current year was £782.16, and finds that £800 was therefore a reasonable estimate at the beginning of the financial year

c. there is no evidence that the Respondent/Landlord expected at the beginning of the year to spend, or indeed has been spending, or will spend, more time on managing the Building and during this financial year than during the previous year, and the Tribunal accordingly finds that a reasonable estimate of the management and accountancy charge at the beginning of the financial year was £200, for reasons already given

d. the Tribunal accepts the figure of £300 for maintenance works, which was unchallenged by Mr Hextall, to have been a reasonable estimate at the beginning of the financial year

e. a reasonable estimated service charge for the whole Building at the beginning of the financial year was accordingly £1,300, made up as follows :

estimated insurance	£800
management and accountancy charge	£200
maintenance works	£300
total	£1,300

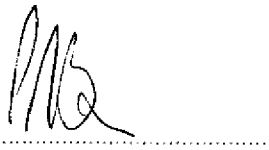
f. the service charge payable by Mr Hextall in relation to this item is therefore £260, namely 20% of £1,300

g. the service charges payable by Mr Le Friec and Mrs Frampton in relation to this item are their respective service charge proportions of £1,300

Section 20C application

79. In reliance on Mr Tucker's assurance at the hearing that the Respondent/Landlord would not seek to recover through the service charge costs in relation to the application, the Tribunal makes no order in respect of those costs accordingly

Dated the 30 January 2007



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P R Boardman
(Chairman)

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