IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BD/LBC/2005/0032

IN THE MATTER OF FLAT 2, 33 VICARAGE ROAD, EAST SHEEN, LONDON, SW14 8RZ

AND IN THE MATTER OF SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

BETWEEN:

MR P NOCKOLDS

Applicant

-and-

(1) MR A McCUAIG
(2) Ms C HAAB

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that a breach of a covenant or condition in a lease has occurred.

2. The relevant lease in this matter is dated 29 September 1972 and was granted by Nicholas John Athol Spicer to Michael Tyndale Cooper in respect of the subject premises for a term of 99 years from the date of the lease ("the lease").

The Applicant and the Respondents are, respectively, the present lessor and lessees of the lease.

3. The Applicant contends that the Respondents have breached the terms of clause 2(8) of the lease. By clause clause 2(8) provides the lessee covenanted, *inter alia,* with the lessor not to:

> *"... alter or change any of the architectural decorations of the Building... ... without the Lessor's consent which shall not be unreasonably withheld... ".*

4. It is common ground between the parties that the Respondents, in or about October 2005, replaced four wooden sash windows situated at the rear and left hand side on the first floor with uPVC double glazing ("the windows"). The windows are within the demised premises. It is also common ground that there is no definition of "architectural decorations" in the lease.

5. It is the Applicant's case that the windows amount to "architectural decorations" within the meaning of clause 2(8) of the lease and, having replaced the windows without his consent, the Respondents have breached the said clause and invites the Tribunal to make a finding in those terms.

6. Broadly, the Respondents submit that the phrase "architectural decorations" if given its ordinary and natural meaning could not apply to the windows and, therefore by replacing them, the Respondents have not breached clause 2(8) of the lease.

7. Although both parties, in their respective statements of case, go on to deal with matters of implied consent and/or waiver of any breaches, as will become apparent for the reasons below, it was not necessary for the Tribunal to go on to decide these matters.

Inspection

8. The Tribunal inspected the subject premises on 20 February 2006. The property comprised the first and second floor maisonette in a two storey plus attic semi detached house. The property as a whole had an attractive architectural style with decorative features to the front elevation and was similar in design to several nearby properties. There was a two storey bay to the front with uPVC casement windows at first floor level. The side and rear elevations were plain in design and had recently fitted uPVC windows with a mixture of top or side hung casements.

Decision

9. The Tribunal determined this application without a hearing. It's determination is based solely on the statements of case and other documentary evidence filed by both parties.

10. In the Tribunal view, this matter turns solely on the issue of whether the windows amount to "architectural decorations" within the meaning of clause 2(8) of the lease. As stated earlier, this phrase is not defined in the lease. To determine this issue, clause 2(8) needs to be construed as to its meaning and effect.

11. In his statement of case, the Applicant contended that the differences between the old and new windows were so striking as to amount to a change in the "architectural decorations" within the meaning of clause 2(8). At paragraph 1.3 of his Reply to the Respondent's statement of case, he accepted that the windows may be part of the structure of the building. However, at paragraph 1.2 of the same document, he submitted that the structural and aesthetic elements of a building could not be separated. He relied on a definition of the word "architecture" in the 1971 edition of the Oxford English Dictionary as being the special method or style in which the structure and ornamentation of a building is arranged. "Ornamental" was defined as decoration: adding beauty or attractiveness; decorative. He submitted that "architecture" combined both structure and decoration. By analogy, it followed that the phrase "architectural decorations" could include those things which may be part of the structure and not merely applied to the structure, such as the windows, which were not only part of the structure but also served a decorative function.

12. It is perhaps trite to say that one of the pillars of the canons of construction is that words should be given their natural and ordinary meaning wherever possible. *"It reflects the commonsense proposition that people do not make linguistic mistakes, especially in formal documents"*: see ***Woodfall*** at 11.007. Nevertheless, where a detailed semantic analysis of words in a contract leads to a conclusion that flouts common sense, then the contract must yield to

common sense: per Lord Diplock in ***Antaios Naviera SA v Salen Rederierna AB, The Antaios*** [1985] AC 191 at 201.

13. Applying this canon of construction to the phrase "architectural decorations" in clause 2(8) of the lease, the Tribunal was satisfied, on balance, that it did not include the windows in the Respondents premises. If the Applicant's rather semantic approach to the construction of the phrase "architectural decorations" was correct, it would lead to the possibly absurd position whereby the positive repairing obligation imposed on the lessee by clause 2(3) of the lease, especially in relation to the windows, could not be effected without first obtaining the lessor's consent to carry out any such work. This would place the lessee in an invidious position where there was an absentee or unreasonable lessor or landlord. The Tribunal was satisfied that a reasonable person, having regard to all the terms in the lease, would have concluded that the original parties to the lease could not have intended these consequences. The Tribunal, therefore, did not accept the Applicant's construction of the phrase "architectural decorations" in clause 2(8) of the lease.

14. The Tribunal accepted the Respondents submission that the ordinary and natural use of the words "sash windows" could not be within the meaning of "architectural decorations" because the windows were part of the fabric and structure of the building. They did not decorate it and could not be described as decorative. For a building of this age and construction, the windows served a purely functional purpose and nothing else. The Tribunal also accepted the Respondents submission that "architectural decorations" suggested something

in the nature of a design feature to the building itself for decorative effect rather than part of the building, which the windows clearly are. The Tribunal agreed that examples of "architectural decorations" to this building included the decorative canopies over the front ground floor window and over the front door, the decorative carved timber supports beneath the canopies over the front windows and front door, the decorative cornice running down the middle of the building and the cornicing above the first floor windows.

15. The Tribunal further accepted the Respondents submission that "architectural decorations" to the building inferred some addition to the structure of the building whereas the windows were already an integral part of the structure and not decorations to it. The Tribunal was assisted by the case of ***Irvine v Moran*** 1 EGLR 261 at 263 cited by the Respondents in this regard. On any view, the windows could not amount to "architectural decorations" within the meaning of clause 2(8) of the lease because they were an existing not an additional structure to the building.

16. Accordingly, for the reasons stated above, the Tribunal finds that by replacing the windows in the subject property, the Respondents did not breach clause 2(8) of the lease. It was, therefore, not necessary for the Tribunal to go on to consider the arguments advanced by both parties in relation to implied consent or waiver of any breach of clause 2(8) of the lease. It was also not necessary for the Tribunal to consider whether the replacement of the windows had breached any other terms of the lease because that was not the Applicant's

pleaded case. In any event, the Tribunal did not consider any such breaches had occurred. The Tribunal, therefore, dismisses this application.

Dated the 20 day of March 2006

CHAIRMAN.....

Mr I Mohabir LLB (Hons)