

**Residential Property Tribunal Service
Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

Case No.	CHI/00HG/LSC/2005/0070
Property	41, College Avenue, Plymouth PL4 7AP.
Applicant	41, College Avenue Management Company Limited.
Respondent	The leaseholders of the property.
Date of application	25 th July, 2005
Date of Hearing	17 th October, 2005
Venue	Appeals Service, St. Catherine's House, Notte Street, Plymouth
Representation	Mr. Charles Knapper, Solicitor, Fursdon Knapper, for the applicant Mr. Shaw Flat 2) Mr. Tegg Flat 4) Respondents Mr. Grist Flat 10)
Tribunal Members	Mr. D.G. Willis Chairman Mr. T.E. Dickinson B.Sc. F.R.I.C.S. Mr. M.T. Creek M.B.E.
Date of Decision	1 st November 2005

The Application

1. The application was received with a letter dated 25th July 2005 from Fursdon Knapper Solicitors of 308, St. Levan Road, Keyham, Plymouth acting on behalf of 41, College Avenue Management Company Limited which requested a determination of service charges for the year 1st July 2004 to 30th June 2005, and for the year 1st July 2005 to 30th June 2006 bearing in mind the anticipated cost of carrying out repairs to the property to make it wind and weatherproof, cure the cause of water penetration, install a damp proof course, and overcome other defects evident as a result of the lack of repair and maintenance over a period of several years.

Inspection

2. The tribunal inspected the property on 17th October 2005 prior to the hearing. None of the leaseholders were present. A member of staff of the Management Company allowed the Tribunal access to the common parts of the property and also to flats 2, 3, 7, and 8.

Flat 2 showed signs of damp on the rear wall and the ceiling of the bathroom.

Flat 3. Although the door to this flat could be opened, inspection was limited as the electric light was not working and natural light was very limited. However it could be seen that part of the ceiling in the bed sitting room had fallen down bringing with it the light fitting. There appeared to be evidence of fungal growth to the exposed ceiling timbers and wet rot to the skirting boards.

Flat 7 showed signs of damp in the shower room and the kitchen/bed/sitting room. The ventilation was poor. The occupant of flat 7 was present during the inspection.

Flat 8 showed signs of damp along the outside front wall in the bay. The occupant of flat 8 was present during the inspection.

3. The common parts revealed evidence of both rising damp and damp penetration to the front and rear walls to the entrances. The common parts were also in need of redecoration and the ceiling by the back door was in need of repair. The Tribunal considered that very little repair and/or maintenance had been carried out to the common parts for a number of years.

4. On inspecting the outside from ground level, without the help of any ladders, the pitched roof appeared to be in reasonable condition. There were several noticeable cracks in the wall rendering at all levels to the front and rear, but the Tribunal did not consider there was any sign of the rendering being significantly off key. Certainly there was no perceivable evidence of this where they were able to test the rendering at ground level. The entire outside both front and rear was in need of redecoration.

Hearing

5. A Hearing took place at Appeals Service, St. Catherine's House, Notte Street, Plymouth. This was attended by Mr. Charles Knapper, who represented the Management Company, and three leaseholders namely Mr. Shaw owner of Flat 2, Mr. Tegg owner of Flat 4, and Mr. Grist owner of Flat 10.

6. Mr. Knapper addressed the Tribunal and explained at length how the Management Company had become involved. There had also been problems because of a lack of co-operation by the leaseholders. He wanted to see the property brought up to a better standard, including the garden. He was of the opinion that the fire escape was the cause of much of the damp penetration to the rear of the property.

7. A Report dated 21st June 2002 had been obtained from Mr. S.G. Baker of Rhys and Partners, Chartered Surveyors. This sets out his findings as a result of his inspection and the reasons he considered the property was showing signs of damp penetration. He considered it was not possible for him to give an accurate estimate of the cost of repairs, but to give some guidance he considered the cost to be in the region of £25,000 + V.A.T.

8. A detailed specification of works and materials to be used was obtained from Robin Hancock, a Chartered Building Surveyor. This included the complete renewal of the external rendering of the premises both front and rear, together with details of numerous other works including treatment for damp penetration to the walls and treatment to affected areas of woodwork. Mr. Hancock, in his specification, considered that the only way to make the property wind and waterproof was to completely re-render the property both front and back and to carry out the works mentioned.

9. Based on this specification in November 2004, O'Leary quoted £86,011.55 excluding V.A.T. and GVA Construction quoted £92,680.00 excluding V.A.T.

10. A meeting took place on 2nd February 2005 at which were present six leaseholders or their representatives: Mr. Knapper, Miss Cathy Selhurst and Mr. Andrew Neale from the Management Company, and Robin Hancock. Concern was expressed as to the difference between the estimate from Mr. Baker for repairs and making good, and those for complete re-rendering. This difference was a minimum of £61,000 excluding V.A.T.. It was agreed that further quotations be obtained for the repair and making good works. The leaseholders could also obtain estimates.

11. It was also agreed at this meeting that the works be completed in two phases. Phase 1 would be the works to make the property watertight and weatherproof to include the rendering, repairs to the rainwater goods and the flat roof to Flat 2, the damp proof course and any internal work caused by damp penetration. Phase 2 would be to carry out the remainder of the works the following year.

12. After the meeting Mr. Tegg obtained estimates for Phase 1 of the repairs from contractors previously used by him. He was satisfied with their standard of work. Remedial Services Tavistock Ltd. estimated £7398 plus V.A.T. to remedy damp penetration; for the provision of scaffolding Andrew Toms estimated £2100 plus V.A.T.; for decorating Andrew Porter estimated £1800 including V.A.T.; and for replacing guttering and fascia boards SSI estimated £1398.91 plus V.A.T.. These total £14,603.87 including V.A.T..

13. After the meeting Mr. Hancock obtained further quotations for the Phase 1 works:-

Kirk Construction	£58,000.00	
O'Leary	£65,506.73	
GVA Construction	£66,950.00	all plus V.A.T.

14. At the hearing Mr. Knapper stated that he considered the complete re-rendering of the property to be the appropriate course of action. He considered a patch up job to be inappropriate and wondered how the leaseholders would cope if the patch up job should fail. He also considered that the fire escape was causing damp ingress at the rear of the property and needed to be removed and a new one erected that would not cause damp ingress. Mr. Knapper considered it essential to have a qualified project manager to ensure the works were carried out according to the specification.

15. Mr. Shaw confirmed that he was happy for Phase 1 to go ahead as soon as possible on a cost effective basis.

16. Mr. Tegg confirmed that he was satisfied with the work carried out for him by Remedial Services Tavistock Ltd. Before preparing their estimate they had inspected the rendering above ground level with the help of a ladder and in their estimate considered complete re-rendering to both front and rear unnecessary.

17. Mr. Tegg indicated that a sum of £20,000 was currently held to cover the project costs. Mr. Knapper confirmed this to be so as all the leaseholders had now paid their contributions as part of the service charge.

18. Mr. Tegg has outlined the position to the leaseholders and 8 out of the 11 said they would be happy to proceed using his contractors.

19. Mr. Knapper expressed concern that Remedial Services Tavistock was a damp remedial company and he did not consider the company was qualified to carry out rendering work. He was also concerned that the estimates were given without reference to any specification and such works would be carried out without a project manager.

20. Mr. Tegg agreed that he would be happy to employ a project manager to satisfy Mr. Knapper.

21. Mr. Tegg indicated that he was basically happy with the amount of the service charge with the possible exception of the insurance premium. He had been quoted a premium of £655 compared with £1779.

22. Under the terms of the lease, the amount of the service charge shall be a percentage of the sum which on 1st July in every year the Landlord or his authorized agents estimate and certify in writing to be the reasonable cost and expense to the landlord of performing his obligations under the lease and collecting the ground rents and service charges. Mr. Knapper was unable to produce such estimates or accounts but did produce a copy of the demand relating to Flat 2 for the year 2003/2004. This showed Insurance Premium of £1779.57, Sinking fund of £1500, Cyclic expenses of £2556. The lessee's liability for Flat 2 was 8% of these expenses. In addition Ground Rent of £40 and Managing Agent's fee of £130 + V.A.T. were payable. Mr. Knapper confirmed that the accounts complied with the RICS Code of Practice.

Decision

23. Having inspected the outside of the property from ground level the Tribunal considers that the report dated 21st June 2002 of Mr. Baker of Rhys & Partners to be factually accurate and should be the basis on which the Management Company should proceed.

24. The Tribunal also considered the specification prepared by Robin Hancock was more appropriate to a very large multi storey building rather than a 3 storey mid-terraced house. The Tribunal did not consider the detailed specification and the quotations based on the work therein were the most economical way of dealing with the defects of the property.

25. The Tribunal considered that the report by Remedial Services Tavistock Ltd. covered most of the necessary work; also the Tribunal understands that owing to a bereavement the company now say that the project is too large for them to carry out.

26. The Tribunal further considers that it is essential for the existing fire escape to be removed and for it to be replaced with a new one, constructed and installed in such a way as to stop water penetration.

27. The Tribunal appreciates the wisdom of employing a project manager to ensure a specification of works is strictly adhered to, and Mr. Tegg agreed to this at the hearing.

28. The property has been converted into 11 small units of accommodation which the Tribunal considers does not warrant exceedingly large amounts of money being spent on them by way of a service charge. The Tribunal considered it would be far more likely for the leaseholders to contribute to essential repairs which they can see need doing rather than face a demand for an excessive sum for works which the leaseholders consider unnecessary.

29. The Tribunal considered the amount of service charge to cover the project costs should be such sum that the leaseholders would find acceptable and be willing to pay rather than a sum which they could ill afford and refuse to pay. The Tribunal therefore considered that a patch and repair job was appropriate and the project cost should be included in the service charge. It was noted that in the past project costs have not been paid promptly by some leaseholders. However Mr. Knapper confirmed that all outstanding charges in respect of project costs have now been paid.

30. The cyclic charges were considered to be reasonable by the leaseholders and were therefore not considered by the Tribunal.

31. Since Mr. Knapper confirmed that the leaseholders had paid their contributions towards the project costs for the year ending 30th June 2005, the arrears of service charge for that period have been satisfied and consequently it was not necessary for the Tribunal to consider the application in paragraph 7 a. 1. of the application form.

32. The Tribunal determines the service charge for the year 1st July 2005 to 30th June 2006 to be £6,128.06 as requested, but considers that the project costs for this period should be based on overall project costs more akin to the estimates obtained by Mr. Tegg on behalf of the Respondents, subject to dealing appropriately with the provision of a fire escape and a project manager.

33. The Tribunal was impressed by the standard of oratory of all concerned at the hearing.

Dated

1st November 2005

Signed

D.G. Willis

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Dated *1st November 2005*

Signed *D.G. Willis*

D.G. Willis Chairman