RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UQ/LSC/2005/0025**
Property:	**Flats 3, 5, 7, 9, 11 and 14 Grosvenor Court** **55 Upper Grosvenor Road** **Tunbridge Wells** **Kent** **TN1 2DY**
Applicants:	**Mr. and Mrs. Shorter Lessees Flats 5, 7 and 9** **Ms H. Watts Lessee Flat 3** **Mr. S. Russell Lessee Flat 11** **Ms S. Burton Lessee Flat 14**
Respondent:	**Mr. J. Toalster** **(t/a Figtree Properties)**
Date of Hearing:	**14th October 2005** **24th October 2005**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. M.G. Marshall FRICS** **Mr. T.J. Wakelin**
Date decision Issued:	21st November 2005

RE: FLATS 3, 5, 7, 9, 11 AND 14 GROSVENOR COURT, UPPER GROSVENOR ROAD, TUNBRIDGE WELLS, KENT TN1 2DY

Background

1. Mr. and Mrs. Shorter made an application for determination of liability to pay service charges and have authority from Ms Watts, Mr. Russell and Ms Burton to represent them.

2. The application concerns two matters:
(a) A demand for a contribution towards a "one off" charge to deal with damp and dry rot problems at 55 Upper Grosvenor Road and
(b) The loss of use of a parking space.

3. Our determination appears at paragraphs 18 to 51.

Inspection

4. We inspected the subject property on the 14th October 2005 in the presence of Mr. and Mrs. Shorter, Ms Watts, Mr. Toalster and Mrs. Sears, the Respondent's daughter who is concerned in the management of this property.

5. Although it had been indicated by one of the lessees long before the inspection that there were matters inside the property to which the lessees wished to draw our attention, when we arrived, those present had nothing they wished to point out inside the building and had understood that we wished to inspect inside.

6. We saw that the property was a detached building which had been converted into fourteen flats. On the ground floor were flats 1, 2, 3 and 4.

7. We were shown where parking spaces had been marked out and it was clear that those spaces could not be used if normal vehicular access were required to the garages on the ground floor of the next building and we were told that there was such a right of access in favour of the owner of the garages.

8. We could see that a trench had been created around the building and that it had been filled with pebbles and we were told that the reference to raised paving related to some paving slabs and to the asphalt or concrete around the building. The paving slabs were higher than the asphalt or concrete but we had no evidence of the time of laying those slabs. The level of the asphalt or concrete appeared not to have been changed for some time.

Hearing

9. Present at the hearing were the Mr. and Mrs. Shorter, Ms H. Watts, Mr. Toalster and Mrs. Sears. Mrs. Canning one of the lessees attended for part of the hearing.

10. We had been provided by the parties with documents which we had considered.

11. The Respondent had referred in those documents to another case before a Leasehold Valuation Tribunal in which he had been successful. We made it clear that just because a party had been successful at one hearing it did not mean that he would be successful at another hearing. Each case is individual and is judged on its own merits.

12. We were told that the property had been developed by a Mr. Malam of Southview Estates Limited and that that company had sold the leasehold interests to the lessees and the freehold to the Respondent. The Respondent also holds a lease of one of the flats

13. We asked if the parties each wished to rely on the statements they had made and the documents they had enclosed with them and if there was anything they wished to add and explained that they would be given the opportunity to ask each other questions.

14. Mr. Shorter presented us with a summary of the main points which he had prepared and gave a copy to the Respondent.

Contained in that summary were the following:

In relation to the works to deal with damp and dry rot

(i) The guarantees should have been transferred correctly at the point of purchase of the freehold of the property from Mr. Malam.

(ii) The Respondent states he has a document which indicates that Southview Estates Limited had used an unapproved plasterer. Why was this issue not raised by the Respondent's Solicitors at the point of purchase so that the work could be rectified and the guarantees validated?

(iii) Not to have instigated the correct transfer of guarantees and not ascertaining the validity of them the Applicants believe was an act of negligence on the Respondent's part in not protecting leaseholders' interests. Not to have instructed a surveyor was grossly irresponsible. Had the Respondent done so, the costs would have been substantially reduced.

(iv) The Respondent was advised in November 2003 by the leaseholder of Flat 3 that there was a problem with damp but this was not addressed until August of the following year. The Applicants believe this exacerbated the problem and involved leaseholders in further unnecessary expense. The Respondent has not acted in the best interests of leaseholders as the Applicants believe he did not act quickly enough to reduce leaseholders' liabilities. The costs are not reasonable and his actions were not those of a responsible freeholder.

(v) There is no facility under the terms of the lease for 'top ups' as the Respondent describes the one-off service charge.

In relation to the Parking Spaces

(vi) Two leaseholders have never had parking rights and signed their contracts knowing this to be the case.

(vii) Three leaseholders had their rights withdrawn. One is pursuing a claim in court. One purchased his flat knowing a dispute existed so has no grounds to bring a case. The Applicants have sought a reduction in the service charge as their rights under the terms of the lease have been breached.

(viii) It was added that the Applicants had no copy of the current insurance policy or the guarantees issued by Gulliver Timber Treatments Limited. The Applicants had no idea what was covered and of the conditions.

15. The Respondent and Mrs. Sears dealt with those points in the following way:

(a) As to point (i), Mrs. Sears stated that guarantees had not been transferred at the time of the purchase of the freehold because the Respondent was not advised of this by his Solicitors. However when Mrs. Sears contacted Preservatim Limited because she had been notified of the damp problem and explained that the guarantee had not been transferred she

was told she could still transfer on payment of a fee. At the time of purchase of the freehold there had been no mention of a damp problem.

(b) As to point (ii), the Respondent could not see why this had been raised. Once plastering work had been done it could not be rectified.

(c) As to point (iii), the Respondent did not appoint surveyors and there is no legal requirement for him to do so. All concerned assumed the property had recently been refurbished to a high standard.

(d) Point (iv) concerns the time of notification of the damp problem. When notified in December 2003 by Ms Watts, the letter to the Respondent came with a surveyor's report which Ms Watts had commissioned. That report contained two recommendations. The first to notify the landlord and the second that she could re-let after making remedial repairs. As an agent letting out property the Respondent in similar circumstances would follow those recommendations and their contracts are usually 12 or 6 month tenancies. Therefore in the Respondent's mind there was a suitable time for the property to be re-let and for addressing the situation. The Respondent assumed that Ms Watts followed both recommendations. It was only in August 2004 that the Respondent received a letter saying that damp was still apparent. At that point the Respondent still thought the flat was being let. Therefore the Respondent started the process in August 2004 and followed the procedure with notices under Section 20 of the Landlord and Tenant Act 1985 and followed the recent legislation as to consultation and by the time all the procedures had been carried out the work started in February 2005. The Respondent did not have the funds in from the lessees and guaranteed payment of Gulliver Timber Treatments Limited from his own funds.

(e) As to point (v), the Respondent sets service charges to cover insurance, maintenance, gardening and a sinking fund and for major items would do notices and make a one off charge.

(f) As to parking, the Respondent had agreed to reduce service charges by £50 subject to caveats. All leaseholders pay service charges according to the floor area of their flats irrespective of whether they have the benefit of a parking space or not and if a reduction were to be made all leaseholders should benefit.

(g) The Respondent stated that at the time of purchasing the freehold and when Mr. and Mrs. Shorter purchased the leasehold, he and Mr. and Mrs. Shorter were informed by Mr. Malam that parking was permitted in those three spaces although there was a right of way. Mrs. Shorter stated she did not know there was a right of way. Ms Watts noticed the right of way but Mr. Malam said parking there was all right. All think the right of way is shown coloured brown on a Land Registry plan.

16. Further comments were made and matters were raised by the parties.

(i) Mr. Shorter considered that it would have been a good idea for the Respondent to have had a survey and Mrs. Shorter considered that if the Respondent had had a survey and dealt with the plastering at the time, rectifying the problem would have cost less than it did in the end. Mr. and Mrs. Shorter did not have a survey when they purchased their leaseholds.

(ii) Ms Watts stated that in November 2003 she notified the Respondent about the damp and that nothing happened until August 2004. The guarantee was of no use because of delay and because it had not been transferred. Referring to the letter dated December 2003 from Mr. Watts, the surveyor said that as Southview Estates Limited had done the plastering he thought that could give Preservatim Limited a loophole to get out of the guarantee. He therefore presumably had a guarantee for Flat 3. If the Respondent read that then a sensible owner would go back to Mr. Malam to enquire if Preservatim Limited could avoid the guarantee. As to delay, there is always a time limit on notification. The Respondent contacted Preservatim Limited in August 2004. The delay in notification and delay generally caused extra expense. The guarantees should have been transferred properly.

(iii) As to the figure of £10,802.48 claimed, Ms. Watts does not know how accurate it is as no final invoices have been seen.

(iv) Mrs. Sears stated that the estimate from Gulliver Timber Treatments Limited for Flat 3 was £1,780 + VAT = £2,091.50

(v) Ms Watts thought that if Fig Tree Properties registered for VAT then the bill to the lessees would have been net of VAT and consequently cheaper but the Respondent stated that if he were registered for VAT he could not have claimed back the VAT and therefore it would have made no difference.

(vi) The Applicants questioned the delay but subject to that they accepted that the work needed doing. They were not sure about the trench round the building. They did not know if it would be effective. It had only just been done. They were not sure if all the work was necessary and if it would be effective.

(vii) Ms Watts pointed out that there is a drain outside her flat and the wall behind it is not protected. The drain takes the waste from two kitchens above and the drain overflows. She has written to the Respondent about this but the Respondent thinks it is all right.

(viii) Ms Watts considered that the management fee of £150 per flat per annum was excessive and was more than Southview Estates Limited had been charging. She also questioned the charge of £514.40 for overseeing the work to deal with damp and dry rot.

(ix) The Respondent considered that £150 per flat per annum was in line with fees charged by management companies and that he would probably instruct managing agents for the future. The previous charge by Southview Estates Limited was unrealistic. Mr. Malam was a developer and to encourage buyers he set low service charges. The property has a sinking fund. As a fee for supervision of the major works £514.40 is 5% as against 10% allowed in another case. Mrs. Sears explained that for this she had arranged for contractors to provide quotes, written to leaseholders about access and keys, had made numerous telephone calls to companies and had made one site visit. She had also dealt with an elderly tenant in Mr. Vinall's flat who may have needed to be found alternative accommodation while work was being carried out. In the event no alternative accommodation was required.

(x) Ms Watts asked why there was a delay in dealing with the redecoration of her flat. In February 2005 she spoke to the Respondent and that was the first time he had said he had no

funds. If she had known she could have had the work done. Better communication and efficiency would have reduced cost.

(xi) Mrs. Sears stated that a Preservatim Limited guarantee was not obtained when the freehold was purchased but later she saw a guarantee in respect of Flat 1. She telephoned Preservatim Limited and spoke to Mr. Breacker who said the guarantee could be transferred for an extra fee. She therefore referred to the guarantee for Flat 1 and assumed any guarantees in respect of the other flats would be the same. She then became aware that clause 2 (g) of the guarantee provided that "Notice of any apparent or suspected failure of the treatment to the work must be given in writing to the Contractor by the Client (or his successor as owner of the property) within 60 days of it being noticed" and thought there could be a problem but Mr. Breacker said the transfer would be no problem and that the 60 days meant 60 days from time she notified Preservatim Limited. Mrs. Sears said she may have done things differently if she had thought the 60 day notice meant something different. However, she agreed that the guarantee is not worded in the way she said Mr. Breacker said it was intended.

(xii) There is a guarantee for Flats 1 and 3 and as far as Mrs. Sears is aware not for Flat 4 even though there was a survey for Flats 1, 3 and 4. She does not know why that should be. The costings of the work by Preservatim Limited are in respect of Flat 1 only. but the Surveyor Competence Certificate refers to Flats 1, 3 and 4.

(xiii) Mrs. Sears did not pursue the matter. She knew there was a guarantee for Flat 1 and presumably for Flat 3. She and the Respondent were not advised to have the guarantee transferred and were not aware it was an issue. She had briefly looked at the guarantee and accepted that to transfer later was reliant on the goodwill of Preservatim Limited but Mr. Breacker had said it could be transferred.

(xiv) As to clause 2 (a) and (b) of the Preservatim Limited guarantee, the re-plastering had been done by Mr. Malam's builders and Gulliver Timber Treatments Limited had said it could be a problem as it could allow Preservatim Limited to avoid the guarantee but Mrs. Sears had nothing in writing from them about this.

(xv) Mrs. Shorter pointed out that the Preservatim estimate in enclosure 2 of the Respondent's bundle provided for plastering by own builder.

(xvi) Mrs. Sears said Preservatim Limited wanted approximately £500 before they would consider doing anything and therefore she was looking into whether there were get out clauses in favour of Preservatim Limited. She asked Gulliver Timber Treatments Limited for a free survey. Clause 2(a) of the guarantee provides that "The Guarantee is void if any works carried out near on or against the building have caused the dampcourse to be damaged or by-passed." One possible cause of the damp was the high level concrete paving surrounding the building but there was no evidence as to whether the paving had been done after the damp proof work.

(xvii) Mrs. Shorter said that all the buildings around there have the same ground level and it seems illogical that the level would have been altered after the damp proofing work had been done.

(xviii) Mrs. Sears said she would not know when the ground level had changed but she did not think Preservatim Limited would be helpful. She had no evidence of why she thought this but later she found that although Preservatim Limited had not refused to honour the guarantee, Mr. Eeles the lessee of Flat 1 had decided not to pursue Preservatim Limited to do any work. He had independently come to the same conclusion as Mrs. Sears.

(xix) Mrs. Sears stated that she had seen documentation from Preservatim Limited given to Mr. Malam that indicated that a trench should be dug and she had that information in the office but did not until the hearing realise its significance. She appreciated that at the hearing it was a bit late to mention this but she and the Respondent were new to this and tried their best but maybe not always to the letter of the law. There was a damp problem, they took advice and acted upon it. This was the advice of Barrett Roofing Limited and Gulliver Timber Treatments Limited.

(xx) Mrs. Shorter considered that surely Preservatim Limited would not have issued the guarantee unless they were satisfied with the work carried out.

(xxi) Mrs. Shorter produced a letter from Figtree Properties dated 23rd February 2005 stating that as far as they were aware there were no guarantees in place in respect of Flats 3 and 4, which was contrary to the evidence given at the hearing. The Respondent stated that the letter should have said no enforceable guarantees.

(xxii) Mrs. Sears, from the letter notifying the Respondent of the damp problem in December 2003, saw this as a potential problem and had it in mind to deal with it by the middle of the year in 2004 but she did not do so. A second letter in August 2004 was received and she then went into action. She had not in the meantime looked at the problem herself nor had she sent anybody to look at it. She accepted that dry rot and damp do not improve with time. Gulliver Timber Treatments Limited said that the problem had not got significantly worse. The letter to lessees dated 2nd February 2005 referred to enclosures but the enclosures were not produced and she was not sure what they contained. The letter stated that contracts had been awarded. She and the Respondent had already made a decision as to who to appoint at that stage and she accepted that technically they had not complied fully with the Consultation Regulations. She now realised that they had missed out the intermediate stage.

(xxiii) The Respondent said he had used reputable contractors and thought their charges reasonable and had guaranteed the payment of contractors. Everyone had been paid in full except Gulliver Timber Treatments Limited who were soon to be paid. Mrs. Sears said that what had been done was based on a judgement call in leaseholders' interests and not for gain for her and the Respondent. She believed at the time that they had acted in accordance with Section 20 and will pass on the work to managing agents for the future.

(xxiv) The Respondent stated that he had notified the lessees in February 2004 that he intended to reimburse Mr. Eeles for the work he had paid for.

(xxv) Mrs. Shorter would like to have a copy of the guarantee from Gulliver Timber Treatments Limited and for the roof work and the insurance policy with conditions every year on renewal.

(xxvi) Mrs. Sears stated that a guarantee could not be obtained from Gulliver Timber Treatments Limited until payment had been made for the work done but she would send copies of the insurance and guarantees to lessees.

(xxvii) She stated that the Respondent's insurance brokers said that the Respondent could not have insured against faulty workmanship carried out for the previous freeholder.

17. The following evidence was given in respect of the Section 20 consultation procedure.

(i) Mrs. Sears stated that the Respondent wrote to the leaseholders on 21st December 2004. In that letter it was stated that there were two problem areas which required urgent attention. The first was that Flats 3 and 4 were experiencing damp problems caused by defective damp proofing. Quotes had been received from Gulliver Timber Treatments Limited and Protim Services Limited to remedy the problem. The second was that the damp proof course had been breached and a reduction in the ground level of 150 mm was needed to remedy the problem. Quotes had been requested but not received from Langton Property Services and Byhurst Property Services. It was also stated in the letter that the leaseholder of Flat 1 had paid for damp proofing work which needed to be refunded to him from general leaseholder funds when a surplus arose. It was stated that in accordance with current legislation individual leaseholders could request that quotations be obtained from other suppliers. The initial likely cost was stated to be around £5,000 to cover damp proofing work on Flats 3 and 4 and reimbursement of validated expenditure on Flat 1 and that in addition expenditure would be needed to improve the ground level damp proof course and may be needed to remedy defective rendering.

(ii) The lessees responded by suggesting that the Respondent should look at guarantees and insurance as a way of funding the works but the Respondent had already done that. The Applicants agreed that the lessees had not recommended any contractors.

(iii) More estimates were received and on the 2nd February 2005 a letter was sent out informing the leaseholders of the total sum required for the "one off" charge and the lessees' contributions. The letter gave the total sum estimated by two contractors to remedy each of the two problems and stated that contracts had been awarded to Gulliver Timber Treatments Limited and Barrett Roofing Limited for the work.

Determination

18. In the absence of the parties we considered the evidence which had been given.

Parking

19. The copy of the Land Registry plan is not clear but it does warn of the existence of a right of way. From our inspection it was clear that the parking spaces in question could not be used if normal vehicular access were required to the garages on the ground floor of the next building and we were told that there was such a right of access in favour of the owner of the garages.

20. Neither the Applicants nor the Respondent could suggest a practical way in which there could be a reduction of service charges to account for the loss of the parking spaces and the Tribunal could find no justification for such a reduction. The application before us was for a determination of the liability to pay service charges. The Applicants accepted they had a liability under the terms of their leases to pay service charges. The loss of parking spaces had no bearing on that. We found that there was no justification for a reduction in service charges because of the loss of the use of a parking space. That loss could not be dealt with by us as part of this application.

The works to deal with damp and dry rot

21. The following has been claimed by the Respondent as part of the service charges although it was described as a one off charge or top up.

Refurbishment of Flat 1	1,704.70
Damp proof Flat 3	2,091.50
Dry rot Flat 4	2,673.13
Trench	3,818.75
Management fees 5%	514.40
	10,802.48

22. For reasons which are set out below the refurbishment of Flat 1 requires to be dealt with separately.

23. We were not satisfied that if Fig Tree Properties had been registered for VAT that would have produced any benefit for the lessees. Indeed if registered for VAT, the Respondent would have been obliged to add VAT to his management charges which would have increased some of the cost to the lessees.

24. We found that the management charges of £150 per flat per annum were reasonable and in line with current charges. The reasonableness of the amount charged to oversee the works would depend on what was done in that connection and we noted that 5% of the works to Flat 1 had been included although there was no evidence of any input from the Respondent in relation to those works.

25. Although there was no provision in the lease for one off charges or top ups as the Respondent had named them, we explained at the hearing that this appeared to be an argument about terminology. The Respondent has an obligation to repair and maintain the structure and is entitled to claim the cost from the lessees as part of the service charges. The one-off or top up payment was in reality part of the service charges.

26. The Applicants contended that the Respondent should have had a survey when he bought the freehold. It is fair to note that the Applicants did not have a survey when they bought their leases and neither did the Respondent when he bought a lease. This was unwise. It may have been unwise not to have a survey when buying the freehold but there is no obligation to do so and the fact that the Respondent did not do so does not change the situation that he is responsible for maintaining the structure and the lessees are responsible for paying for it.

27. The Applicants suggest that the Respondent should have insured against this problem but we were not provided with any evidence that insurance against ineffective workmanship carried out on behalf of a previous freeholder was available and the Respondent had no duty to take out such insurance.

28. All parties agree that work was needed to cure the damp and dry rot problems.

29. We have to consider whether the Respondent acted reasonably in deciding not to pursue Preservatim Limited to carry out work under their guarantee.

30. He should have transferred the guarantee when he bought the freehold but the letter from Preservatim Limited states that the guarantee could still be transferred for a fee. He should have notified Preservatim Limited of the problems within 60 days of the problem being noticed but Mrs. Sears says she was told by Mr. Breacker of Preservatim Limited that the 60 days would run from the time of notification of Preservatim Limited by her. The interpretation of the 60 day notice provision in the Preservatim Limited guarantee reported by Mrs Sears as Mr. Breacker's understanding of the provision does not provide for what is to happen in the 60 days following notification to Preservatim Limited and Mrs. Sears accepted that the guarantee is not worded in the way suggested by Mr. Breacker. We found that this was not a realistic interpretation of the clause in the guarantee and that the clause should clearly be interpreted as imposing a sixty day time limit from the date the problem was first noticed to notifying Preservatim Limited in writing of it. Perhaps it did indicate that strict adherence to the notice provision was not regarded as a problem by Mr. Breacker.

31. Of more importance was the perceived difficulty concerning the plastering and the possibility of the paving having raised the level of the ground along part of the wall.

32. The Respondent found out later that Mr. Eeles had not pursued Preservatim Limited but we have no evidence why Mr. Eeles took that decision. As Mrs. Shorter said, Mr. Eeles may have caused a breach of the guarantee by having work done.

33. In the survey Ms Watts obtained, Messrs. Harrison & Associates mentioned in the conclusions that "Although the Landlord has the benefit seemingly of a guarantee for the remedial damp proof course, it would not appear that the specialist company was responsible for all the associated waterproof plastering. This may and often does complicate accountability. It is therefore essential that you do not approach Preservatim and address all of your complaints to your Landlord". This evidence produced by Ms Watts tends to support the action taken by the Respondent not to pursue Preservatim Limited.

34. Although we have seen nothing in writing to this effect, from Gulliver Timber Treatments Limited, we were told that that company had said there was likely to be a problem in enforcing the Preservatim Limited guarantee because of the plastering.

35. Bearing these matters in mind we came to the conclusion that on a balance of probabilities the Respondent was right not to pursue Preservatim Limited as he was unlikely to achieve a satisfactory result. Even though he was at fault on two counts, transfer and notice, the plastering problem, the need for a trench and the possibility of the ground level having been changed by the addition of the paving slabs along part of the wall, the work undertaken by Gullivers Timber Treatments Limited for Mr. Eeles and the wording of the

guarantee meant that it would be difficult to enforce. Even if the Respondent had transferred and notified in time we found on a balance of probabilities that it was unlikely that he would have been able to enforce the guarantee because of its restricted wording and these problems.

36. If the Respondent was right to bring in new contractors then he can claim the reasonable cost from lessees subject to Section 20 where it applies.

37. Contractors are entitled to be paid and the Respondent is able to claim contributions, as provided in the leases, from the lessees in respect of costs reasonably incurred, subject to Section 20.

38. When the letter was written to leaseholders on the 21st December 2004, the quotes for the works to Flats 3 and 4 and the cost of works to Flat 1 were not itemised. The letter of 2nd February 2005 referred to enclosures namely the accounts for the period ending 24th March 2004 and a summary of "one off" charges but we did not have copies of these enclosures. Flat 14 has the highest contribution 12.43%. Therefore once total cost exceeds £2,011.27 that lessee's contribution exceeds £250 and the Section 20 procedure is required.

39. The Respondent agreed that the Section 20 consultation procedure applied and that he had not fully complied with it.

40. The procedure followed by the Respondent did not comply with the requirements of The Service Charges (Consultation Requirements)(England) Regulations 2003 which came into force on 31st October 2003 and no request has been made for any of the requirements to be dispensed with.

41. The result is that the sum which can be recovered from the lessees is limited to £250 per lessee in respect of the damp proof works to Flat 3 - £2,091.50, dry rot to Flat 4 - £2,673.13 and the trench - £3,818.75. Total: £8,583.38. The contributions will not cover the total cost and therefore the Respondent will have to make up the shortfall and pay the contractors and there will be no funds available to pay management fees in respect of the works.

42. We have to consider such evidence as there is as to the reasonableness of the costs incurred. We were not provided with any invoices in respect of the work done. The letter to lessees dated 2nd February 2005 referred to enclosures but the enclosures were not produced and Mrs. Sears was not sure what they contained. We have in letters from the Respondent figures he says were taken from estimates. There is some evidence from estimates and no evidence of the cost being unreasonable or any evidence of the standard of work being unsatisfactory. Other leaseholders have paid and this suggests that they were satisfied with the work and its cost. The Applicants did not raise the reasonableness of cost or the standard of work in their application. Mr. Eeles apparently accepted the cost and paid it. Although there was delay in dealing with the problem once it had been reported, there was insufficient evidence that delay increased the cost of the works. We cannot be satisfied on the evidence presented to us that the final cost was reasonable but we find that the work to Flats 3 and 4 and the trench would have resulted in a reasonable cost of at least £4,209. This means that as the cost exceeded £2,011.27 at least one lessee would have had to pay more than £250 and the Section 20 procedure would have been required. It also means that the 5.94% required of the lowest contributor would have been just over £250.

43. There was evidence at the hearing that £1,704.70 including VAT had been charged by Gulliver Timber Treatments Limited and paid by Mr. Eeles for work carried out to Flat 1 to deal with damp problems. The Respondent stated that he had notified the lessees in February 2004 that he intended to reimburse Mr. Eeles for the work he had paid for. There has been no evidence that the work to Flat 1 was not necessary and neither has there been any complaint as to the reasonableness of the cost of that work or the standard of it. From the unchallenged evidence that we have we find that that work was work which would normally have been carried out on the instruction of the Respondent and that the lessees would then have had to contribute towards its cost in accordance with the terms of their leases.

44. The charges for the work to Flat 1 should not have been included in the letter of 21st December 2004. The work had been done and the Section 20 procedure did not apply. It could simply have been charged as part of the service charges subject to being reasonably incurred.

45. All lessees including the Respondent in his capacity as a lessee should contribute to the sum of £1,704.70 in respect of the works to Flat 1 in the proportions provided for in the leases. e.g. 5.94% = £101.26 and 12.43% = £211.89. Mr. Eeles' contribution being deducted from the sum reimbursed to him.

46. Within 28 days of the date of issue of this decision each lessee is to pay to the Respondent in respect of the works to Flat 1, the proportion of £1,704.70 provided for by the lease plus, in respect of the works to Flats 3 and 4 and the trench work £250, being the maximum permitted in the absence of compliance with the Section 20 consultation procedure or dispensation with its requirements. If, as we understand the situation to be, some lessees have paid in excess of these sums then within 28 days of the date of issue of this decision the Respondent is to refund to those lessees a sum by which the amount paid by each such lessee exceeds the appropriate contribution for the works to Flat 1 plus £250. For the sake of clarity we would point out that any such reimbursements must be made by the Respondent and not out of any sinking fund. Within 56 days of the date of issue of this decision the Respondent to pay to Mr. Eeles the sum of £1,704.70 less Mr. Eeles' contribution towards the works to Flat 1.

Reimbursement of fees and costs

47. In proceedings before the Leasehold Valuation Tribunal we are able to order that one party reimburse the fees paid by the other party and we are able to order that one party pays the other party's costs up to £500. Often in court proceedings the party who has been unsuccessful has to pay the costs of the successful party. That is a factor which we have borne in mind in considering whether or not to order reimbursement and/or costs.

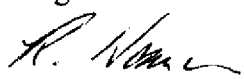
48. All parties have contributed to their own misfortune in not taking reasonable precautions when purchasing their interests in the property and the Respondent in not following the consultation procedure has limited his right to recover the full reasonable cost of the works.

49. In this case neither party has been clearly successful or clearly unsuccessful. The lessees have had their contributions towards the cost of these works reduced but they each

still have to pay £250 plus their contribution to the cost of works to Flat 1. Had the Respondent complied with the consultation requirements then the lessees would probably have had to pay more.

50. We find that there is no justification for making an order for fees to be reimbursed or for the payment of costs.

51. Similarly, we find no justification for making an order under Section 20C limiting the Respondent's right to add the reasonable costs of these proceedings to the service charges but we make the comment that we have not seen any evidence to suggest that such costs should be large.



R. Norman
Chairman.