

REF LON 00AG/LIS/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A AND SECTION 20(C) AND THE LANDLORD AND
TENANT ACT 1987 SECTION 24

**AND IN THE MATTER OF FLAT 4 46 CHALCOT CRESCENT
LONDON NW1 8YD**

Applicant Michael Partridge

Represented by Mr P Petts Counsel

Respondent Chalcot Crescent (Management) Limited

Represented by Mr J Schehtman

The Tribunal

Mr P Leighton LLB (Hons)

Mr W J Reed FRICS

Dr A M Fox

Hearing Date 25th and 26th November 2004, 10th January 2005

Date of Decision 31st March 2005

A Introduction

- 1 By an application dated 20th June 2004 the Applicant applied for a determination of liability for service charges payable in respect of Flat 4 Chalcot Crescent NW1 8YD (“the Flat”) under Section 27A of the Landlord and Tenant Act 1985. On 27th September 2004 the Applicant applied for the appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 and an application to vary his lease under Part IV of that Act.
- 2 A pre trial review was held and directions were given on 30th September 2004 by Mrs Veronica Barran for the hearing of both applications together on 25th November 2004. The application to vary the lease was adjourned and was not dealt with at the hearing.
- 3 On 31st August 2004 a preliminary issue was determined by the Tribunal (Lady Wilson and Mr D Banfield) on two questions namely (1) whether the Tribunal has jurisdiction to determine the liability for service charges paid by a previous leaseholder prior to the applicant’s purchase of the flat and (2) whether the landlord was entitled under the lease to claim sums for a sinking fund.
- 4 That Tribunal decided that it would not reopen the question of payments made by the mortgagee in possession on account of the liability of the previous leaseholder; and further that clause 4(4)(d) of the lease permits the accumulation of a reasonable sinking fund for all future expenditure allowed by the lease.

Inspection:

- 5 The Tribunal inspected the property on 25th November 2004. It is a five-story end of terrace property located in the Primrose Hill Conservation Area. The building consists of a basement and three upper floors. The property is divided into four units with a basement, ground floor and first floor flats and a maisonette on the second and third floors. Entry to the property is by way of a common front door for the ground and upper floors with a separate entrance to the basement. There is an entryphone system but it appears to be out of order and is in need of replacement.
- 6 The upper maisonette has a flat roof area which can be accessed by a ladder on the third floor but it belongs to the freeholder and not to the lessee of Flat 4

Repairs had recently been carried out to the surface of the roof area by the Applicant. At the time of the Tribunal's visit there was a considerable amount of conversion work taking place in the upper maisonette. The tribunal did not inspect the interior of the other flats in the building.

- 7 There was also scaffolding outside the building and building and decoration works were scheduled to begin to the exterior of the premises.

The Hearing

- 8 The Applicant is the leaseholder of Flat 4 on the second and third floors and appeared at the hearing represented by counsel Mr Petts. . The Respondent is a management company of which the three other residents of the premises Mr Schehtmann (Flat 1 basement) Mrs Mason (Flat 2 ground floor) and Mr Jackson (flat 3 first floor) are the directors. Each of the directors appeared at the hearing but Mr Schehtmann who was the secretary of the company and had had responsibility for management of the premises represented the respondent during the course of the hearing. Each of the parties produced a separate bundle of documents and further documents were produced at the hearing, mainly by Mr Schehtmann. The Applicant and Mr Schehtmann both gave evidence at the hearing and Mr Jackson and Mrs Mason were also permitted to add some evidence during the course of the hearing..
- 9 At the outset of the hearing the Respondent indicated that it would not oppose the appointment of a manager but objected to the proposed nominee of the Applicant, Mr Birkett, and proposed Mr David Pearl as an alternative manager. The Applicant indicated that he had no objection to Mr Pearl being appointed and arrangements were made for Mr Pearl to attend on 26th November to be questioned by the Tribunal.
- 10 The grounds upon which the Applicant applied were set out in his notice under Section 22 of the 1987 Act, in which he relied upon breach of obligation by the Respondent under the lease, unreasonably high service charges and other circumstances such as the failure to provide audited accounts in support of the service charge demands.
- 11 Whilst the Respondent objected to the grounds put forward by the Applicant it did not oppose the appointment and the Tribunal having heard Mr Pearl decided that it was just and equitable to make an order. Since the hearing was not concluded by the 26th November 2004 as originally envisaged the Tribunal

decided to proceed to make an order appointing Mr Pearl as manager with effect from 1st January 2005. In the light of the circumstances which the Tribunal finds in relation to the service charges and the failure to provide audited accounts the Tribunal is satisfied that the grounds for appointment are made out. A copy of the Management Order setting out the terms of appointment is attached to the decision at Appendix A.

The Lease

- 12 The Applicant's lease is for a term of 99 years from 25th March 1971 at a rent of £50 per annum which includes the following covenants :-
- 13 By Clause 3(1)(c)(i) the Lessee covenanted
"to maintain uphold and keep the interior of the demised premises ...in good and substantial repair... all the interior plasterwork of walls wholly within the demised premises.... the windows window frames and doors belonging to the demised premises and the balconies thereto ...and the ceiling of the demised premises and one half part in depth of the depth of the joists beams or structure upon which ...floors are laid "
- 14 By clause 3(1)(e) the Lessee covenanted "*not to make any structural alterations or structural additions to the demised premises or any part thereof or remove any of the landlord's fixtures without the previous consent in writing of the lessors nor without the like consent to cut alter or injure any of the walls timbers doors or windows thereof*"
- 15 By clause 4(1) the Lessee further covenanted to:- :
" repair maintain uphold and keep the demised premises as to afford all necessary support shelter and protection to the parts of the Building other than the demised premises and to afford to the lessees of the other flats in the Building access for the purposes of Clause 3(l) of the lease(access to the lessors for the purpose of carrying out repairs)
- 16 By clause 4(4) of the lease the Lessee covenanted :-
"to pay to the lessors without any deduction by way of further and additional rent one fourth part of the aggregate of the expenses and outgoings incurred by the lessors in the repair, maintenance renewal and insurance of the Building and the other heads of expenditure as... are set out in the Fifth Schedule hereto such further and additional rent (the service charge) being subject to the following terms and provisions

- (a) *the amount of the service charge shall be ascertained and certified by a certificate..... signed by the Lessor's managing agents as experts and not as arbitrators annually and as soon after 31st December in each year as may be practicable*
- (b) *A copy of the Certificate for each year shall be supplied by the Lessors to the Lessee on written request and without charge to the lessee*
- (c) *The certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessors during the year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge*
- (d) Deals with the question of payments for a sinking fund which was determined by the Tribunal on the preliminary issue
- (e) Provides for the payment of an interim service charge at the time of the payment of ground rent and in advance of expenditure being incurred if required to do so by the managing agents at their discretion as a fair and reasonable interim payment ...
- (f) *As soon as practicable after the signature of the certificate the Lessors shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question*
- (g) Provides that no forfeiture shall arise for non payment of the interim service charge but that action may be taken to recover the amounts payable
- (h) Makes provisions relating to the commencement and the determination of the term
- 17 By clause 5(2) of the lease the lessor covenanted to keep the building insured and by clause 5(6) the lessor covenanted:-
"That (subject to the payment of the rent and service charge) the Lessors will maintain and keep in good and substantial repair and condition
- (i) *the main structure of the building including the foundations and the roof thereof with its gutters and rain water pipes*
- (ii) *all....gas and water pipes drains and cables....*
- (iii) *the forecourt area main entrance and stepsincluding the erection thereon for the storage of dustbins and the boundary walls and fences...*
- (iv) *the main entrance hall passages landings and staircases within the Building*

(v) *the entryphone system*

Provided that the Lessors shall not be liable to the Lessee for any defect or want of repair..... unless the Lessors have had written notice thereof “

- 18 Clause 5(7) imposes a duty on the Lessors to paint the exterior of the building at intervals of not less than every five years; and by clause 5(8) the landlord covenanted to “*use its best endeavours to keep clean decorated and carpeted and reasonably lighted the said entrance hall passages landings staircases and other parts of the Building enjoyed or used by the Lessee in common with others.*”
- 19 By clause 5(9) the landlord covenanted to do all such acts as necessary to register the Lessee’s title against the Lessor’s freehold title of the premises
- 20 The Fifth Schedule sets out the various heads of expenditure for which the lessee is required to pay a proportion of the service charge. In particular Clause 5 specifies “*The fees of the Lessor’s managing agents for the collection of the rents of the flats in the Building and for the general management thereof provided that the fees shall at no stage exceed the maximum ...allowed by the scales authorised for the time being by the Royal Institute of Chartered Surveyors*”
- 21 In 1990 the present landlord entered into a deed of variation with all the lessees affirming that it would perform and observe all the landlord’s covenants in the leases
- 22 By clause 2 of the deed of variation the lessees covenanted
“(c) to pay the fees and disbursements paid to any Managing Agents appointed by the Company but if the Company does not appoint such agents it shall be entitled to add a sum not exceeding 10% of the total of any expenditure incurred by the Company under the provision in the leases for administration. Any expenses incurred by the Landlord shall be paid in the proportion of one quarter by each Lessee except where the Landlord shall direct that any expenditure shall be divided in different proportions where for instance any individual Lessee or Lessees have by his or her or their default caused the expenditure or where the expenditure can be divided in such a way that the proportions can relate to less in number and all the lessees of the building.... and any dispute ...shall be resolved in accordance with clause 3(2) of the lease.

The Issues

- 23 The outstanding issues between the parties related to the service charge accounts from the date of purchase of the property by the Applicant and his wife in February 2004 up to the end of the service charge year ending 31st August 2004. Service charges for the period up to the date of purchase had been discharged by Barclays Bank save for an issue relating to the repairs to the roof which were charged to the account of Flat 4, on the ground that the previous lessee Mr Derek Draper had been responsible for damage to the roof.
- 24 A number of items were agreed between the parties at the hearing but the following issues remained outstanding for determination by the Tribunal :-
- (a) whether there was a credit on the account of Mr Partridge on the basis that Barclays had overpaid the lessor in respect of the earlier service charge period
 - (b) a figure in respect of insurance charges for the year ending August 2004. The Applicant admitted liability to pay his proportion of the sum of £771.75 for building insurance but disputed the sum of £246.75 for professional indemnity insurance
 - (c) Companies House registration fees in the sum of £15
 - (d) Professional fees of a surveyor Mr Roger Oakley dated 8th August 2003 in the sum of £506.89 in respect of a second report prepared by him in connection with the condition of the roof and other repairs
 - (e) A sum of £58 for cleaning charges for work undertaken by Mr Schehtmann the leaseholder of Flat 1 and the company secretary to the bin area and stairwell. The leaseholder denied that such charges were recoverable under the lease but accepted that if it was recoverable the sum was reasonable.
 - (f) A sum of £893 in respect of work carried out to flat 2 by Amwell Construction in April 2004.
 - (g) A professional survey in connection with proposed Section 146 proceedings in the sum of £657
 - (h) Legal fees incurred in connection with advice on such proceedings
 - (i) A management fee of £1000 being half the figure of £2000 per flat claimed by Mr Schehtmann based on a resolution passed by the directors in November 2002

- 25 In addition the Applicant sought a determination that the costs incurred by him in the repair of the roof namely £4,230 should be borne equally by all the leaseholders and that three quarters of the cost should be offset against his liability for service charges

The Facts

- 26 The Tribunal found the following facts. The Respondent is the freehold owner of 46 Chalcot Crescent. It is a limited company the directors of whom are the lessees of Flats 1 2 and 3 at the address. Mr Schehtmann the leaseholder of Flat 1 is the secretary and undertakes many of the duties on behalf of the company. The chairman is Mr Jackson of Flat 3
- 27 The previous owner of Flat 4 was Mr Derek Draper, a former political adviser. In about 2002 Mr Draper went to America leaving the flat in the possession of an associate but failed to pay the service charges due. The associate later vacated and ultimately Flat 4 was abandoned and the mortgagee Barclays Bank took possession and discharged the arrears in order to avoid a forfeiture
- 28 In early 2004 the bank arranged for the leasehold interest in the flat to be sold by auction and the company had intended to bid for it. In the end the Applicant purchased the lease for the sum of £405,000 at auction on 11th February 2004. The other leaseholders, in particular Mr Schehtmann, were very suspicious of Mr Partridge's motives thinking him to be a property developer, and the situation was made worse in that shortly after purchase Mr Partridge permitted a television crew to take some film of the premises without consulting the other residents.
- 29 Although the bank had discharged most of the arrears there was still outstanding the question of repairs to the flat roof of the property, which was immediately above Flat 4. Mr Schehtmann and the company were of the opinion that the condition of the roof had been caused entirely by the activities of Mr Draper holding parties on the roof and placing large pots there which had damaged the surface.
- 30 Mr Schehtmann therefore made a demand that Mr Partridge should discharge all the arrears of service charge including sums alleged to be due for management fees and 100% of the estimated costs of the repair of the roof before his title would be recognised, and before he could be allotted his share in the company. A number of the items claimed were unclear to Mr Partridge;

many seemed unjustified and supporting information was not supplied at the time

- 31 The Tribunal accepts that this was the case, as even at the hearing various items in support of the amounts claimed had not been supplied and further documents were produced at the adjourned hearing which resulted in the claims being amended or reduced. The final account for the period up to 31st August 2004 was not produced until the hearing on 10th January 2005 and showed variations from the amounts originally claimed as set out in the schedule prepared by Mr Petts at the adjourned hearing.
- 32 Mr Partridge tried to discuss the matters in dispute with Mr Schehtmann without success and cheques, which were sent in respect of undisputed charges, were not paid in by the company. He had a meeting at Mr Jackson's flat in May 2004 and as a result it was agreed that he would be allocated his share on giving an indemnity to the directors. He gave the indemnity but did not receive the share
- 33 Mr Partridge endeavoured to reach agreement with the Lessors on a number of issues but was unsuccessful. Accordingly he decided to proceed with the refurbishment work on this flat and to carry out the repair works to the roof.. This he undertook with the original contractors who had tendered for the work R Brooks in the sum of £4,230. The Respondents took the view that this was a breach of the terms of the lease and served a notice under Section 146 of the Law of Property Act but have not issued any proceedings in respect of this to date.

The Tribunal's Decision on the Issues

- 34 The Tribunal was satisfied that the accounts kept by Mr Schehtmann were not satisfactory and that Mr Partridge had been justified in challenging the items, which were demanded from him. The attitude of Mr Schehtmann was less than co-operative to Mr Partridge and that for all these reasons, even if consent had not been forthcoming to the appointment of a manager the Tribunal would have considered that there were grounds for making such an order and that it was in the best interest of the property that such an order was made.
- 35 The Tribunal was also satisfied that Mr Pearl the proposed manager was a fit and proper person to discharge the functions of manager even though he had had limited experience of managing a block of flats. He was generally aware

of the functions which he was required to perform, was willing to liaise fully with all the parties (an important feature as there had been a breakdown in communication between them) and his charges appeared to be reasonable.

- 36 With regard to the items of service charge in dispute the Tribunal found that the building insurance was recoverable in the sum of £770.75 but that the figure for professional indemnity of the directors was a company expense and not properly chargeable to the service charge account. Likewise the Companies House registration fees were a liability of the company alone.
- 37 With regard to the cleaning charge Mr Schehtmann stated that the work to the bin area was carried out by him and that it was for the benefit of all the flats. He stated that if a cleaner were employed the costs would be much higher. The lease permits recovery of service charge for cleaning and the Tribunal considers that the amount charged is not excessive and that the Applicant should pay his share of the charge at £58. It was contended that it was not recoverable under Clause 5 of the fifth Schedule, which covers the costs of cleaning, but this clause does appear to cover the area of which the Applicant has either use or benefit with regard to the bins.
- 38 With regard to the items for surveyors and legal fees in connection with the preparation of the Section 146 notice in connection with the work carried out by the lessee. There is a clause in the lease, Clause 3 (f), which requires the lessee to pay the costs of forfeiture notices whether proceeded with or not. The Applicant contends that the Section 146 notice was invalid and unreasonably invoked, but such costs are not service charges and the Tribunal considers that it has no jurisdiction to make any determination in connection with these costs. and that in the event of the parties' failure to agree the issue must be resolved by the court.
- 39 The sum of £893 in relation to the repair at Flat 2 is not recoverable at this stage. It has not been paid by the landlord but by Mrs Jackson the leasehold owner of Flat 2. Attempts have been made apparently unsuccessfully so far to recover the costs of the repair from her insurers. If recovery is not made the Manager will have to consider whether to discharge it and seek recovery in the next service charge account.
- 40 With regard to the second report prepared by Mr Oakley the surveyor, it should be noted that the original report was prepared in 2001 at a cost of

£427.70 and that the second report was obtained in 2003 to update the position with regard to the flat roof. The Applicant contends that the second report was not necessary, covered ground already dealt with in the first report and was excessive in cost, The Tribunal is of the opinion that it was necessary for the landlord to obtain an updated report from Mr Oakley on the condition of the roof and it is not possible to say that the cost of the report was excessive. Accordingly the landlord is entitled to include it in the service charge accounts. The costs of the report was paid as to half by Barclays Bank so that the amount recoverable for the period up to August 2004 is £253.50 and the Applicant's share is £63.40

- 41 With regard to the condition of the flat roof, there is conflicting evidence from two surveyors Mr Oakley for the landlord and Rodgers and Associates who was instructed by Mr Partridge in march 2004. Mr Oakley is of the opinion that the condition of the roof is due to the placing of furniture and large pots on the roof whereas Mr Rodgers is of the opinion that the asphalt is beyond its natural life and is probably over 30 years old. Neither surveyor was called to give evidence .so that it was not possible to test their evidence by cross-examination.
- 42 It is likely that the flat roof would have required repair at some point at the landlord's expense but it is very probable that the placing of the furniture and pots on the asphalt accelerated the process. The Tribunal is of the opinion that half the costs should be borne by the owner of Flat 4 and that the balance should be borne by the four flats equally, so that the Applicant must bear five eighths of the total cost of the works namely £2643.75 and is entitled to credit of £1,586.25 against his ultimate liability to the service charge account.
- 43 With regard to the management fee the Tribunal is of the opinion that the position is covered by clause 2(c) in the variation of lease agreement. Since no managing agent has been appointed the maximum recoverable under this clause is 10% of the total expenditure incurred by the lessor in administration of the premises.
- 44 Whilst it might be argued that this figure should include the incurring of legal and surveying expenses which might be recoverable other than by service charge.(i.e those incurred in the Section 146 notices) the Tribunal is of the opinion that the figure should be limited to those items recoverable as part of

the service charge account. Thus taking the figures allowed by the Tribunal on the annual figure allowed by the Tribunal under the above headings, namely building insurance in the sum of £771, cleaning bin costs £175, other cleaning £252, electricity £78 and Mr Oakley's report in the sum of £507 the total expenditure amounts to just under £1800 so that the liability of the lessees would be £180. On that basis Mr Partridge's share would be £45. If one included the additional legal and surveying costs there would be added a further £4,800 making an additional sum of £480.

- 45 However it must be borne in mind that Barclays Bank have paid £1000 towards the management fees for the half year up to February 2004. Since this figure exceeds the amount recoverable under the lease it would seem unreasonable to expect Mr Partridge to pay any further sum by way of management charges and the Tribunal accordingly disallows any further sum
- 46 Whilst the Tribunal accepts that the other directors agreed to make payments of £2000 per annum to Mr Schehtmann this is a voluntary payment in excess of his entitlement under the lease and is not binding on Mr Partridge. .

Section 20C costs

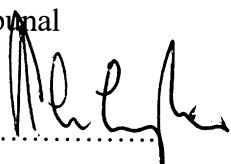
- 47 It is unclear as to whether the lease enables the costs of proceedings before the Tribunal to be added to the service charge account. Clause 5 of the fifth Schedule set out above relates to the fees of managing agents but Mr Schehtmann is not a managing agent within the meaning of that clause. The only other clause which might apply is clause 8, which provides for contribution towards complying with contesting or making representations against legislation or orders which affect the premises, but in the view of the Tribunal this does not cover the representation before a leasehold valuation tribunal on a service charge issue.
- 48 In any event the Tribunal has considered whether if any clause in the lease should enable the landlord to recover the costs of the proceedings by way of service charge, whether all or part of such costs should be disallowed.
- 49 In the light of the Tribunal's findings in relation to the service charge issues the fact that the actions of Mr Schehtmann made the issue of this application inevitable, and that the Tribunal has seen fit to reduce the service charge amounts and to appoint a manager, the Tribunal would direct that no costs should be added to the service charge account in respect of the lease of Flat 4.

50 The effect of this will probably mean that the costs will have to be paid by the company and in practice by the directors of the company in such proportions as they may agree.

Conclusion

- 51 The Applicant is not entitled to any refund in respect of the alleged overpayment by Barclays Bank and for the sake of completeness any existing service charge liability which Barclays Bank did not discharge remains due. However where the payment made by Barclays exceeds the total amount found due the Applicant is not required to make any further payment as in the case of the management fee.
- 52 The Applicant's liability in respect of roof repairs is limited to 50% of the costs of repairs plus one quarter of the balance making a total of 5/8ths of the total costs and is entitled to credit the balance against his service charge liability
- 53 The Applicant's liability for service charges on the remaining items is as set out in Paragraphs 36 to 45 above
- 54 No costs of these proceedings should be paid by the Applicant by way of future service charge, and the Respondent should reimburse the Applicant the costs of both applications and the hearing fee, which he has paid to the Tribunal

Chairman

A handwritten signature in black ink, appearing to read "M. J. P. J." followed by a stylized surname.

Date ...31st March 2005

REF LON 00AG/LAM/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF PART II THE LANDLORD AND TENANT
ACT 1987**

**AND IN THE MATTER OF 46 CHALCOT CRESCENT LONDON
NW1 8YD**

BETWEEN

MICHAEL PARTRIDGE

Applicant

and

**CHALCOT CRESCENT (MANAGEMENT) CO LIMITED
Respondent**

ORDER

Upon hearing Mr P Petts of Counsel for the Applicant and Mr J Schehtman, the Company Secretary, on behalf of the Respondent

BY CONSENT IT IS ORDERED

- 1 That Mr Laurence Pearl FNAEA of Saffron Property Limited (hereinafter called "the manager") be and is hereby appointed manager of the property known as 46 Chalcot Crescent ("the property") for a period of 5 years from 1st January 2005 in accordance with the terms of Paragraphs 3 6 and 7 of this Order.**

- 2 The property comprises 4 flats known as flats 1 to 4 in an end of terrace house with a forecourt and side access and a rear garden demised to the lessee of Flat 1. The names and addresses of the lessees of flats 1 to 4 and**

the name and registered address of the Respondent are set out in the Appendix

- 3 During the period of his appointment the manager shall, subject to the provision in paragraph 4 of this Order, collect and apply in accordance with this Order the following:-**
 - (a) the ground rents reserved on flats 1,2 3 and 4 in the property**
 - (b) the service charges(including insurance contributions) payable in accordance with the leases of flats 1,2 ,3 and 4 in the property**
 - (c) the balance of any contributions held by the Respondent in respect of any sums paid by the leaseholders as ground rents, or service charges standing to the credit of the service charge account as at 1st January 2005**
- 4 The manager shall not be entitled to collect any sum whatsoever from the leaseholders which fell due for payment before 1st January 2005 but for the avoidance of doubt he shall be entitled to collect any balance standing to the credit of the service charge account from the Respondent and further shall be entitled to collect any sums due from the leaseholders which fall due after that date and have not been paid including any payments due in accordance with Paragraph 3 above.**
- 5 The Respondent by its servant or agent J Schehtman shall disclose to the manager all documents held by him or by his agents or advisers as the manager may reasonably require for the proper management of the property.**
- 6 The terms of the appointment of the manager shall be in accordance with the terms of the manager's standard agreement as set out in his letter to the Respondent dated 2nd November 2004 and the terms of his remuneration shall be at the rate of 15% of the total sums payable in respect of each of the flats 1 to 4 in the property subject to an annual minimum figure of £1,000 and to an initial take over charge of £50 per unit .**
- 7 The duties of the manager shall be in accordance with the terms of his letter to the Respondent dated 2nd November 2004 but will also include the following whether or not they are specified therein :-**

- (a) Arranging for the satisfactory completion of all works in progress at the property, if any, at the date of his appointment.**
 - (b) Preparing and agreeing with the Applicant, the lessees of flats 1, 2 and 3 and the Respondent as the owner of the building an annual service charge budget including if necessary a sinking fund provision.**
 - (c) Preparing a maintenance plan for the regular repair and redecoration of the exterior and common parts of the property as may be required during the period of management**
 - (d) Dealing expeditiously with routine repairs**
 - (e) Reviewing the current arrangements if any for the repair and maintenance of the entryphone system and to arrange for the system to be maintained or replaced as may be appropriate.**
 - (f) Observing the Respondent's covenants in the individual leases of the flats.**
 - (g) Enforcing the lessees' covenants in the leases of the individual flats within the building**
 - (h) Monitoring and ensuring quality and "value for money" in the services provided to the property**
 - (i) Complying with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended by the Commonhold and Leasehold Reform Act 2002 and in accordance with the Government approved RICS Code of Management Practice (ISBN 085466438) or any successor code which may be introduced in substitution thereof and is currently in force.**
- 8 Annually during the period of his appointment at a convenient date the manager shall provide the Respondent as owner of the property with an itemised account of the ground rents received from flats 1,2 3, and 4 together with any interest accrued thereon and to pay the Respondent such sums as may be due to it**
- 9 The manager shall submit to the Tribunal regular reports no less frequently than once in each year and twice in the first year of his appointment concerning the performance of his duties and the condition of the property**

- 10 This Order shall be registered in accordance with Section 24(8) of the Landlord and Tenant Act 1987
- 11 The Applicant, the Respondent , the manager or the leaseholders of flats 1,2 or 3 or of flat 4 in the event that the Applicant shall cease to be leaseholder of such flat shall be at liberty to apply to a Leasehold Valuation Tribunal of the London Rent Assessment Panel for further directions under or a variation of the terms of this order

Chairman

Date 20/12/04

REF LON 00AG/LIS/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A AND SECTION 20(C) AND THE LANDLORD AND
TENANT ACT 1987 SECTION 24**

**AND IN THE MATTER OF FLAT 4 46 CHALCOT CRESCENT
LONDON NW1 8YD**

Applicant Michael Partridge

Represented by Mr P Petts Counsel

Respondent Chalcot Crescent (Management) Limited

Represented by Mr J Schehtman

The Tribunal

Mr P Leighton LLB (Hons)

Mr W J Reed FRICS

Dr A M Fox

Hearing Date 25th and 26th November 2004, 10th January 2005

Date of Decision 31st March 2005

A Introduction

- 1 By an application dated 20th June 2004 the Applicant applied for a determination of liability for service charges payable in respect of Flat 4 Chalcot Crescent NW1 8YD ("the Flat") under Section 27A of the Landlord and Tenant Act 1985. On 27th September 2004 the Applicant applied for the appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 and an application to vary his lease under Part IV of that Act.
- 2 A pre trial review was held and directions were given on 30th September 2004 by Mrs Veronica Barran for the hearing of both applications together on 25th November 2004. The application to vary the lease was adjourned and was not dealt with at the hearing.
- 3 On 31st August 2004 a preliminary issue was determined by the Tribunal (Lady Wilson and Mr D Banfield) on two questions namely (1) whether the Tribunal has jurisdiction to determine the liability for service charges paid by a previous leaseholder prior to the applicant's purchase of the flat and (2) whether the landlord was entitled under the lease to claim sums for a sinking fund.
- 4 That Tribunal decided that it would not reopen the question of payments made by the mortgagee in possession on account of the liability of the previous leaseholder; and further that clause 4(4)(d) of the lease permits the accumulation of a reasonable sinking fund for all future expenditure allowed by the lease.

Inspection:

- 5 The Tribunal inspected the property on 25th November 2004. It is a five-story end of terrace property located in the Primrose Hill Conservation Area. The building consists of a basement and three upper floors. The property is divided into four units with a basement, ground floor and first floor flats and a maisonette on the second and third floors. Entry to the property is by way of a common front door for the ground and upper floors with a separate entrance to the basement. There is an entryphone system but it appears to be out of order and is in need of replacement.
- 6 The upper maisonette has a flat roof area which can be accessed by a ladder on the third floor but it belongs to the freeholder and not to the lessee of Flat 4

Repairs had recently been carried out to the surface of the roof area by the Applicant. At the time of the Tribunal's visit there was a considerable amount of conversion work taking place in the upper maisonette. The tribunal did not inspect the interior of the other flats in the building.

- 7 There was also scaffolding outside the building and building and decoration works were scheduled to begin to the exterior of the premises.

The Hearing

- 8 The Applicant is the leaseholder of Flat 4 on the second and third floors and appeared at the hearing represented by counsel Mr Petts. . The Respondent is a management company of which the three other residents of the premises Mr Schehtmann (Flat 1 basement) Mrs Mason (Flat 2 ground floor) and Mr Jackson (flat 3 first floor) are the directors. Each of the directors appeared at the hearing but Mr Schehtmann who was the secretary of the company and had had responsibility for management of the premises represented the respondent during the course of the hearing. Each of the parties produced a separate bundle of documents and further documents were produced at the hearing, mainly by Mr Schehtmann. The Applicant and Mr Schehtmann both gave evidence at the hearing and Mr Jackson and Mrs Mason were also permitted to add some evidence during the course of the hearing..
- 9 At the outset of the hearing the Respondent indicated that it would not oppose the appointment of a manager but objected to the proposed nominee of the Applicant, Mr Birkett, and proposed Mr David Pearl as an alternative manager. The Applicant indicated that he had no objection to Mr Pearl being appointed and arrangements were made for Mr Pearl to attend on 26th November to be questioned by the Tribunal.
- 10 The grounds upon which the Applicant applied were set out in his notice under Section 22 of the 1987 Act, in which he relied upon breach of obligation by the Respondent under the lease, unreasonably high service charges and other circumstances such as the failure to provide audited accounts in support of the service charge demands.
- 11 Whilst the Respondent objected to the grounds put forward by the Applicant it did not oppose the appointment and the Tribunal having heard Mr Pearl decided that it was just and equitable to make an order. Since the hearing was not concluded by the 26th November 2004 as originally envisaged the Tribunal

decided to proceed to make an order appointing Mr Pearl as manager with effect from 1st January 2005. In the light of the circumstances which the Tribunal finds in relation to the service charges and the failure to provide audited accounts the Tribunal is satisfied that the grounds for appointment are made out. A copy of the Management Order setting out the terms of appointment is attached to the decision at Appendix A.

The Lease

- 12 The Applicant's lease is for a term of 99 years from 25th March 1971 at a rent of £50 per annum which includes the following covenants :-
- 13 By Clause 3(1)(c)(i) the Lessee covenanted
"to maintain uphold and keep the interior of the demised premises ...in good and substantial repair... all the interior plasterwork of walls wholly within the demised premises.... the windows window frames and doors belonging to the demised premises and the balconies thereto ...and the ceiling of the demised premises and one half part in depth of the depth of the joists beams or structure upon which ...floors are laid "
- 14 By clause 3(1)(e) the Lessee covenanted "*not to make any structural alterations or structural additions to the demised premises or any part thereof or remove any of the landlord's fixtures without the previous consent in writing of the lessors nor without the like consent to cut alter or injure any of the walls timbers doors or windows thereof*"
- 15 By clause 4(1) the Lessee further covenanted to:- :
" repair maintain uphold and keep the demised premises as to afford all necessary support shelter and protection to the parts of the Building other than the demised premises and to afford to the lessees of the other flats in the Building access for the purposes of Clause 3(l) of the lease(access to the lessors for the purpose of carrying out repairs)
- 16 By clause 4(4) of the lease the Lessee covenanted :-
"to pay to the lessors without any deduction by way of further and additional rent one fourth part of the aggregate of the expenses and outgoings incurred by the lessors in the repair, maintenance renewal and insurance of the Building and the other heads of expenditure as... are set out in the Fifth Schedule hereto such further and additional rent (the service charge) being subject to the following terms and provisions

- (a) *the amount of the service charge shall be ascertained and certified by a certificate..... signed by the Lessor's managing agents as experts and not as arbitrators annually and as soon after 31st December in each year as may be practicable*
 - (b) *A copy of the Certificate for each year shall be supplied by the Lessors to the Lessee on written request and without charge to the lessee*
 - (c) *The certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessors during the year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge*
 - (d) Deals with the question of payments for a sinking fund which was determined by the Tribunal on the preliminary issue
 - (e) Provides for the payment of an interim service charge at the time of the payment of ground rent and in advance of expenditure being incurred if required to do so by the managing agents at their discretion as a fair and reasonable interim payment ...
 - (f) *As soon as practicable after the signature of the certificate the Lessors shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question*
 - (g) Provides that no forfeiture shall arise for non payment of the interim service charge but that action may be taken to recover the amounts payable
 - (h) Makes provisions relating to the commencement and the determination of the term
- 17 By clause 5(2) of the lease the lessor covenanted to keep the building insured and by clause 5(6) the lessor covenanted:-
- "That (subject to the payment of the rent and service charge) the Lessors will maintain and keep in good and substantial repair and condition*
- (i) *the main structure of the building including the foundations and the roof thereof with its gutters and rain water pipes*
 - (ii) *all....gas and water pipes drains and cables....*
 - (iii) *the forecourt area main entrance and stepsincluding the erection thereon for the storage of dustbins and the boundary walls and fences...*
 - (iv) *the main entrance hall passages landings and staircases within the Building*

(v) *the entryphone system*

Provided that the Lessors shall not be liable to the Lessee for any defect or want of repair..... unless the Lessors have had written notice thereof“

- 18 Clause 5(7) imposes a duty on the Lessors to paint the exterior of the building at intervals of not less than every five years; and by clause 5(8) the landlord covenanted to “*use its best endeavours to keep clean decorated and carpeted and reasonably lighted the said entrance hall passages landings staircases and other parts of the Building enjoyed or used by the Lessee in common with others.*”
- 19 By clause 5(9) the landlord covenanted to do all such acts as necessary to register the Lessee’s title against the Lessor’s freehold title of the premises
- 20 The Fifth Schedule sets out the various heads of expenditure for which the lessee is required to pay a proportion of the service charge. In particular Clause 5 specifies “*The fees of the Lessor’s managing agents for the collection of the rents of the flats in the Building and for the general management thereof provided that the fees shall at no stage exceed the maximum ...allowed by the scales authorised for the time being by the Royal Institute of Chartered Surveyors*”
- 21 In 1990 the present landlord entered into a deed of variation with all the lessees affirming that it would perform and observe all the landlord’s covenants in the leases
- 22 By clause 2 of the deed of variation the lessees covenanted
“(c) *to pay the fees and disbursements paid to any Managing Agents appointed by the Company but if the Company does not appoint such agents it shall be entitled to add a sum not exceeding 10% of the total of any expenditure incurred by the Company under the provision in the leases for administration. Any expenses incurred by the Landlord shall be paid in the proportion of one quarter by each Lessee except where the Landlord shall direct that any expenditure shall be divided in different proportions where for instance any individual Lessee or Lessees have by his or her or their default caused the expenditure or where the expenditure can be divided in such a way that the proportions can relate to less in number and all the lessees of the building.... and any dispute ...shall be resolved in accordance with clause 3(2) of the lease.*

The Issues

- 23 The outstanding issues between the parties related to the service charge accounts from the date of purchase of the property by the Applicant and his wife in February 2004 up to the end of the service charge year ending 31st August 2004. Service charges for the period up to the date of purchase had been discharged by Barclays Bank save for an issue relating to the repairs to the roof which were charged to the account of Flat 4, on the ground that the previous lessee Mr Derek Draper had been responsible for damage to the roof.
- 24 A number of items were agreed between the parties at the hearing but the following issues remained outstanding for determination by the Tribunal :-
- (a) whether there was a credit on the account of Mr Partridge on the basis that Barclays had overpaid the lessor in respect of the earlier service charge period
 - (b) a figure in respect of insurance charges for the year ending August 2004. The Applicant admitted liability to pay his proportion of the sum of £771.75 for building insurance but disputed the sum of £246.75 for professional indemnity insurance
 - (c) Companies House registration fees in the sum of £15
 - (d) Professional fees of a surveyor Mr Roger Oakley dated 8th August 2003 in the sum of £506.89 in respect of a second report prepared by him in connection with the condition of the roof and other repairs
 - (e) A sum of £58 for cleaning charges for work undertaken by Mr Schehtmann the leaseholder of Flat 1 and the company secretary to the bin area and stairwell. The leaseholder denied that such charges were recoverable under the lease but accepted that if it was recoverable the sum was reasonable.
 - (f) A sum of £893 in respect of work carried out to flat 2 by Amwell Construction in April 2004.
 - (g) A professional survey in connection with proposed Section 146 proceedings in the sum of £657
 - (h) Legal fees incurred in connection with advice on such proceedings
 - (i) A management fee of £1000 being half the figure of £2000 per flat claimed by Mr Schehtmann based on a resolution passed by the directors in November 2002

25 In addition the Applicant sought a determination that the costs incurred by him in the repair of the roof namely £4,230 should be borne equally by all the leaseholders and that three quarters of the cost should be offset against his liability for service charges

The Facts

- 26 The Tribunal found the following facts. The Respondent is the freehold owner of 46 Chalcot Crescent. It is a limited company the directors of whom are the lessees of Flats 1 2 and 3 at the address. Mr Schehtmann the leaseholder of Flat 1 is the secretary and undertakes many of the duties on behalf of the company. The chairman is Mr Jackson of Flat 3
- 27 The previous owner of Flat 4 was Mr Derek Draper, a former political adviser. In about 2002 Mr Draper went to America leaving the flat in the possession of an associate but failed to pay the service charges due. The associate later vacated and ultimately Flat 4 was abandoned and the mortgagee Barclays Bank took possession and discharged the arrears in order to avoid a forfeiture
- 28 In early 2004 the bank arranged for the leasehold interest in the flat to be sold by auction and the company had intended to bid for it. In the end the Applicant purchased the lease for the sum of £405,000 at auction on 11th February 2004. The other leaseholders, in particular Mr Schehtmann, were very suspicious of Mr Partridge's motives thinking him to be a property developer, and the situation was made worse in that shortly after purchase Mr Partridge permitted a television crew to take some film of the premises without consulting the other residents.
- 29 Although the bank had discharged most of the arrears there was still outstanding the question of repairs to the flat roof of the property, which was immediately above Flat 4. Mr Schehtmann and the company were of the opinion that the condition of the roof had been caused entirely by the activities of Mr Draper holding parties on the roof and placing large pots there which had damaged the surface.
- 30 Mr Schehtmann therefore made a demand that Mr Partridge should discharge all the arrears of service charge including sums alleged to be due for management fees and 100% of the estimated costs of the repair of the roof before his title would be recognised, and before he could be allotted his share in the company. A number of the items claimed were unclear to Mr Partridge;

- many seemed unjustified and supporting information was not supplied at the time
- 31 The Tribunal accepts that this was the case, as even at the hearing various items in support of the amounts claimed had not been supplied and further documents were produced at the adjourned hearing which resulted in the claims being amended or reduced. The final account for the period up to 31st August 2004 was not produced until the hearing on 10th January 2005 and showed variations from the amounts originally claimed as set out in the schedule prepared by Mr Petts at the adjourned hearing.
- 32 Mr Partridge tried to discuss the matters in dispute with Mr Schehtmann without success and cheques, which were sent in respect of undisputed charges, were not paid in by the company. He had a meeting at Mr Jackson's flat in May 2004 and as a result it was agreed that he would be allocated his share on giving an indemnity to the directors. He gave the indemnity but did not receive the share
- 33 Mr Partridge endeavoured to reach agreement with the Lessors on a number of issues but was unsuccessful. Accordingly he decided to proceed with the refurbishment work on this flat and to carry out the repair works to the roof.. This he undertook with the original contractors who had tendered for the work R Brooks in the sum of £4,230. The Respondents took the view that this was a breach of the terms of the lease and served a notice under Section 146 of the Law of Property Act but have not issued any proceedings in respect of this to date.
- The Tribunal's Decision on the Issues**
- 34 The Tribunal was satisfied that the accounts kept by Mr Schehtmann were not satisfactory and that Mr Partridge had been justified in challenging the items, which were demanded from him. The attitude of Mr Schehtmann was less than co-operative to Mr Partridge and that for all these reasons, even if consent had not been forthcoming to the appointment of a manager the Tribunal would have considered that there were grounds for making such an order and that it was in the best interest of the property that such an order was made.
- 35 The Tribunal was also satisfied that Mr Pearl the proposed manager was a fit and proper person to discharge the functions of manager even though he had had limited experience of managing a block of flats. He was generally aware

- of the functions which he was required to perform, was willing to liaise fully with all the parties (an important feature as there had been a breakdown in communication between them) and his charges appeared to be reasonable.
- 36 With regard to the items of service charge in dispute the Tribunal found that the building insurance was recoverable in the sum of £770.75 but that the figure for professional indemnity of the directors was a company expense and not properly chargeable to the service charge account. Likewise the Companies House registration fees were a liability of the company alone.
- 37 With regard to the cleaning charge Mr Schehtmann stated that the work to the bin area was carried out by him and that it was for the benefit of all the flats. He stated that if a cleaner were employed the costs would be much higher. The lease permits recovery of service charge for cleaning and the Tribunal considers that the amount charged is not excessive and that the Applicant should pay his share of the charge at £58. It was contended that it was not recoverable under Clause 5 of the fifth Schedule, which covers the costs of cleaning, but this clause does appear to cover the area of which the Applicant has either use or benefit with regard to the bins.
- 38 With regard to the items for surveyors and legal fees in connection with the preparation of the Section 146 notice in connection with the work carried out by the lessee. There is a clause in the lease, Clause 3 (f), which requires the lessee to pay the costs of forfeiture notices whether proceeded with or not. The Applicant contends that the Section 146 notice was invalid and unreasonably invoked, but such costs are not service charges and the Tribunal considers that it has no jurisdiction to make any determination in connection with these costs. and that in the event of the parties' failure to agree the issue must be resolved by the court.
- 39 The sum of £893 in relation to the repair at Flat 2 is not recoverable at this stage. It has not been paid by the landlord but by Mrs Jackson the leasehold owner of Flat 2. Attempts have been made apparently unsuccessfully so far to recover the costs of the repair from her insurers. If recovery is not made the Manager will have to consider whether to discharge it and seek recovery in the next service charge account.
- 40 With regard to the second report prepared by Mr Oakley the surveyor, it should be noted that the original report was prepared in 2001 at a cost of

£427.70 and that the second report was obtained in 2003 to update the position with regard to the flat roof. The Applicant contends that the second report was not necessary, covered ground already dealt with in the first report and was excessive in cost, The Tribunal is of the opinion that it was necessary for the landlord to obtain an updated report from Mr Oakley on the condition of the roof and it is not possible to say that the cost of the report was excessive.

Accordingly the landlord is entitled to include it in the service charge accounts. The costs of the report was paid as to half by Barclays Bank so that the amount recoverable for the period up to August 2004 is £253.50 and the Applicant's share is £63.40

- 41 With regard to the condition of the flat roof, there is conflicting evidence from two surveyors Mr Oakley for the landlord and Rodgers and Associates who was instructed by Mr Partridge in march 2004. Mr Oakley is of the opinion that the condition of the roof is due to the placing of furniture and large pots on the roof whereas Mr Rodgers is of the opinion that the asphalt is beyond its natural life and is probably over 30 years old. Neither surveyor was called to give evidence .so that it was not possible to test their evidence by cross-examination.
- 42 It is likely that the flat roof would have required repair at some point at the landlord's expense but it is very probable that the placing of the furniture and pots on the asphalt accelerated the process. The Tribunal is of the opinion that half the costs should be borne by the owner of Flat 4 and that the balance should be borne by the four flats equally, so that the Applicant must bear five eighths of the total cost of the works namely £2643.75 and is entitled to credit of £1,586.25 against his ultimate liability to the service charge account.
- 43 With regard to the management fee the Tribunal is of the opinion that the position is covered by clause 2(c) in the variation of lease agreement. Since no managing agent has been appointed the maximum recoverable under this clause is 10% of the total expenditure incurred by the lessor in administration of the premises.
- 44 Whilst it might be argued that this figure should include the incurring of legal and surveying expenses which might be recoverable other than by service charge.(i.e those incurred in the Section 146 notices) the Tribunal is of the opinion that the figure should be limited to those items recoverable as part of

the service charge account. Thus taking the figures allowed by the Tribunal on the annual figure allowed by the Tribunal under the above headings, namely building insurance in the sum of £771, cleaning bin costs £175, other cleaning £252, electricity £78 and Mr Oakley's report in the sum of £507 the total expenditure amounts to just under £1800 so that the liability of the lessees would be £180. On that basis Mr Partridge's share would be £45. If one included the additional legal and surveying costs there would be added a further £4,800 making an additional sum of £480.

- 45 However it must be borne in mind that Barclays Bank have paid £1000 towards the management fees for the half year up to February 2004. Since this figure exceeds the amount recoverable under the lease it would seem unreasonable to expect Mr Partridge to pay any further sum by way of management charges and the Tribunal accordingly disallows any further sum
- 46 Whilst the Tribunal accepts that the other directors agreed to make payments of £2000 per annum to Mr Schehtmann this is a voluntary payment in excess of his entitlement under the lease and is not binding on Mr Partridge. .

Section 20C costs

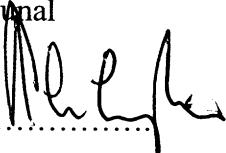
- 47 It is unclear as to whether the lease enables the costs of proceedings before the Tribunal to be added to the service charge account. Clause 5 of the fifth Schedule set out above relates to the fees of managing agents but Mr Schehtmann is not a managing agent within the meaning of that clause. The only other clause which might apply is clause 8, which provides for contribution towards complying with contesting or making representations against legislation or orders which affect the premises, but in the view of the Tribunal this does not cover the representation before a leasehold valuation tribunal on a service charge issue.
- 48 In any event the Tribunal has considered whether if any clause in the lease should enable the landlord to recover the costs of the proceedings by way of service charge, whether all or part of such costs should be disallowed.
- 49 In the light of the Tribunal's findings in relation to the service charge issues the fact that the actions of Mr Schehtmann made the issue of this application inevitable, and that the Tribunal has seen fit to reduce the service charge amounts and to appoint a manager, the Tribunal would direct that no costs should be added to the service charge account in respect of the lease of Flat 4.

50 The effect of this will probably mean that the costs will have to be paid by the company and in practice by the directors of the company in such proportions as they may agree.

Conclusion

- 51 The Applicant is not entitled to any refund in respect of the alleged overpayment by Barclays Bank and for the sake of completeness any existing service charge liability which Barclays Bank did not discharge remains due. However where the payment made by Barclays exceeds the total amount found due the Applicant is not required to make any further payment as in the case of the management fee.
- 52 The Applicant's liability in respect of roof repairs is limited to 50% of the costs of repairs plus one quarter of the balance making a total of 5/8ths of the total costs and is entitled to credit the balance against his service charge liability
- 53 The Applicant's liability for service charges on the remaining items is as set out in Paragraphs 36 to 45 above
- 54 No costs of these proceedings should be paid by the Applicant by way of future service charge, and the Respondent should reimburse the Applicant the costs of both applications and the hearing fee, which he has paid to the Tribunal

Chairman

A handwritten signature in black ink, appearing to read "M. J. L. J." followed by a stylized surname.

Date ...31st March 2005

REF LON 00AG/LAM/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF PART II THE LANDLORD AND TENANT
ACT 1987**

**AND IN THE MATTER OF 46 CHALCOT CRESCENT LONDON
NW1 8YD**

BETWEEN

MICHAEL PARTRIDGE

Applicant

and

CHALCOT CRESCENT (MANAGEMENT) CO LIMITED
Respondent

ORDER

**Upon hearing Mr P Petts of Counsel for the Applicant and Mr J Schehtman, the
Company Secretary, on behalf of the Respondent**

BY CONSENT IT IS ORDERED

- 1 That Mr Laurence Pearl FNAEA of Saffron Property Limited
(hereinafter called "the manager") be and is hereby appointed manager
of the property known as 46 Chalcot Crescent ("the property") for a
period of 5 years from 1st January 2005 in accordance with the terms of
Paragraphs 3 6 and 7 of this Order.**

- 2 The property comprises 4 flats known as flats 1 to 4 in an end of terrace
house with a forecourt and side access and a rear garden demised to the
lessee of Flat 1. The names and addresses of the lessees of flats 1 to 4 and**

the name and registered address of the Respondent are set out in the Appendix

- 3 During the period of his appointment the manager shall, subject to the provision in paragraph 4 of this Order, collect and apply in accordance with this Order the following:-**
 - (a) the ground rents reserved on flats 1,2 3 and 4 in the property**
 - (b) the service charges(including insurance contributions) payable in accordance with the leases of flats 1,2 ,3 and 4 in the property**
 - (c) the balance of any contributions held by the Respondent in respect of any sums paid by the leaseholders as ground rents, or service charges standing to the credit of the service charge account as at 1st January 2005**
- 4 The manager shall not be entitled to collect any sum whatsoever from the leaseholders which fell due for payment before 1st January 2005 but for the avoidance of doubt he shall be entitled to collect any balance standing to the credit of the service charge account from the Respondent and further shall be entitled to collect any sums due from the leaseholders which fall due after that date and have not been paid including any payments due in accordance with Paragraph 3 above.**
- 5 The Respondent by its servant or agent J Schehtman shall disclose to the manager all documents held by him or by his agents or advisers as the manager may reasonably require for the proper management of the property.**
- 6 The terms of the appointment of the manager shall be in accordance with the terms of the manager's standard agreement as set out in his letter to the Respondent dated 2nd November 2004 and the terms of his remuneration shall be at the rate of 15% of the total sums payable in respect of each of the flats 1 to 4 in the property subject to an annual minimum figure of £1,000 and to an initial take over charge of £50 per unit .**
- 7 The duties of the manager shall be in accordance with the terms of his letter to the Respondent dated 2nd November 2004 but will also include the following whether or not they are specified therein :-**

- (a) Arranging for the satisfactory completion of all works in progress at the property, if any, at the date of his appointment.
 - (b) Preparing and agreeing with the Applicant, the lessees of flats 1, 2 and 3 and the Respondent as the owner of the building an annual service charge budget including if necessary a sinking fund provision.
 - (c) Preparing a maintenance plan for the regular repair and redecoration of the exterior and common parts of the property as may be required during the period of management
 - (d) Dealing expeditiously with routine repairs
 - (e) Reviewing the current arrangements if any for the repair and maintenance of the entryphone system and to arrange for the system to be maintained or replaced as may be appropriate.
 - (f) Observing the Respondent's covenants in the individual leases of the flats.
 - (g) Enforcing the lessees' covenants in the leases of the individual flats within the building
 - (h) Monitoring and ensuring quality and "value for money" in the services provided to the property
 - (i) Complying with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended by the Commonhold and Leasehold Reform Act 2002 and in accordance with the Government approved RICS Code of Management Practice (ISBN 085466438) or any successor code which may be introduced in substitution thereof and is currently in force.
- 8 Annually during the period of his appointment at a convenient date the manager shall provide the Respondent as owner of the property with an itemised account of the ground rents received from flats 1,2 3, and 4 together with any interest accrued thereon and to pay the Respondent such sums as may be due to it
- 9 The manager shall submit to the Tribunal regular reports no less frequently than once in each year and twice in the first year of his appointment concerning the performance of his duties and the condition of the property

- 10 This Order shall be registered in accordance with Section 24(8) of the Landlord and Tenant Act 1987**
- 11 The Applicant, the Respondent , the manager or the leaseholders of flats 1,2 or 3 or of flat 4 in the event that the Applicant shall cease to be leaseholder of such flat shall be at liberty to apply to a Leasehold Valuation Tribunal of the London Rent Assessment Panel for further directions under or a variation of the terms of this order**

Chairman

Date 2nd / 12 / 04 ..

REF LON 00AG/LIS/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A AND SECTION 20(C) AND THE LANDLORD AND
TENANT ACT 1987 SECTION 24

**AND IN THE MATTER OF FLAT 4 46 CHALCOT CRESCENT
LONDON NW1 8YD**

Applicant Michael Partridge

Represented by Mr P Petts Counsel

Respondent Chalcot Crescent (Management) Limited

Represented by Mr J Schehtman

The Tribunal

Mr P Leighton LLB (Hons)

Mr W J Reed FRICS

Dr A M Fox

Hearing Date 25th and 26th November 2004, 10th January 2005

Date of Decision 31st March 2005

A Introduction

- 1 By an application dated 20th June 2004 the Applicant applied for a determination of liability for service charges payable in respect of Flat 4 Chalcot Crescent NW1 8YD ("the Flat") under Section 27A of the Landlord and Tenant Act 1985. On 27th September 2004 the Applicant applied for the appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 and an application to vary his lease under Part IV of that Act.
- 2 A pre trial review was held and directions were given on 30th September 2004 by Mrs Veronica Barran for the hearing of both applications together on 25th November 2004. The application to vary the lease was adjourned and was not dealt with at the hearing.
- 3 On 31st August 2004 a preliminary issue was determined by the Tribunal (Lady Wilson and Mr D Banfield) on two questions namely (1) whether the Tribunal has jurisdiction to determine the liability for service charges paid by a previous leaseholder prior to the applicant's purchase of the flat and (2) whether the landlord was entitled under the lease to claim sums for a sinking fund.
- 4 That Tribunal decided that it would not reopen the question of payments made by the mortgagee in possession on account of the liability of the previous leaseholder; and further that clause 4(4)(d) of the lease permits the accumulation of a reasonable sinking fund for all future expenditure allowed by the lease.

Inspection:

- 5 The Tribunal inspected the property on 25th November 2004. It is a five-story end of terrace property located in the Primrose Hill Conservation Area. The building consists of a basement and three upper floors. The property is divided into four units with a basement, ground floor and first floor flats and a maisonette on the second and third floors. Entry to the property is by way of a common front door for the ground and upper floors with a separate entrance to the basement. There is an entryphone system but it appears to be out of order and is in need of replacement.
- 6 The upper maisonette has a flat roof area which can be accessed by a ladder on the third floor but it belongs to the freeholder and not to the lessee of Flat 4

Repairs had recently been carried out to the surface of the roof area by the Applicant. At the time of the Tribunal's visit there was a considerable amount of conversion work taking place in the upper maisonette. The tribunal did not inspect the interior of the other flats in the building.

- 7 There was also scaffolding outside the building and building and decoration works were scheduled to begin to the exterior of the premises.

The Hearing

- 8 The Applicant is the leaseholder of Flat 4 on the second and third floors and appeared at the hearing represented by counsel Mr Petts. . The Respondent is a management company of which the three other residents of the premises Mr Schehtmann (Flat 1 basement) Mrs Mason (Flat 2 ground floor) and Mr Jackson (flat 3 first floor) are the directors. Each of the directors appeared at the hearing but Mr Schehtmann who was the secretary of the company and had had responsibility for management of the premises represented the respondent during the course of the hearing. Each of the parties produced a separate bundle of documents and further documents were produced at the hearing, mainly by Mr Schehtmann. The Applicant and Mr Schehtmann both gave evidence at the hearing and Mr Jackson and Mrs Mason were also permitted to add some evidence during the course of the hearing..
- 9 At the outset of the hearing the Respondent indicated that it would not oppose the appointment of a manager but objected to the proposed nominee of the Applicant, Mr Birkett, and proposed Mr David Pearl as an alternative manager. The Applicant indicated that he had no objection to Mr Pearl being appointed and arrangements were made for Mr Pearl to attend on 26th November to be questioned by the Tribunal.
- 10 The grounds upon which the Applicant applied were set out in his notice under Section 22 of the 1987 Act, in which he relied upon breach of obligation by the Respondent under the lease, unreasonably high service charges and other circumstances such as the failure to provide audited accounts in support of the service charge demands.
- 11 Whilst the Respondent objected to the grounds put forward by the Applicant it did not oppose the appointment and the Tribunal having heard Mr Pearl decided that it was just and equitable to make an order. Since the hearing was not concluded by the 26th November 2004 as originally envisaged the Tribunal

decided to proceed to make an order appointing Mr Pearl as manager with effect from 1st January 2005. In the light of the circumstances which the Tribunal finds in relation to the service charges and the failure to provide audited accounts the Tribunal is satisfied that the grounds for appointment are made out. A copy of the Management Order setting out the terms of appointment is attached to the decision at Appendix A.

The Lease

- 12 The Applicant's lease is for a term of 99 years from 25th March 1971 at a rent of £50 per annum which includes the following covenants :-
- 13 By Clause 3(1)(c)(i) the Lessee covenanted
"to maintain uphold and keep the interior of the demised premises ...in good and substantial repair... all the interior plasterwork of walls wholly within the demised premises.... the windows window frames and doors belonging to the demised premises and the balconies thereto ...and the ceiling of the demised premises and one half part in depth of the depth of the joists beams or structure upon which ...floors are laid "
- 14 By clause 3(1)(e) the Lessee covenanted "*not to make any structural alterations or structural additions to the demised premises or any part thereof or remove any of the landlord's fixtures without the previous consent in writing of the lessors nor without the like consent to cut alter or injure any of the walls timbers doors or windows thereof*"
- 15 By clause 4(1) the Lessee further covenanted to:- :
"repair maintain uphold and keep the demised premises as to afford all necessary support shelter and protection to the parts of the Building other than the demised premises and to afford to the lessees of the other flats in the Building access for the purposes of Clause 3(l) of the lease(access to the lessors for the purpose of carrying out repairs)
- 16 By clause 4(4) of the lease the Lessee covenanted :-
"to pay to the lessors without any deduction by way of further and additional rent one fourth part of the aggregate of the expenses and outgoings incurred by the lessors in the repair, maintenance renewal and insurance of the Building and the other heads of expenditure as... are set out in the Fifth Schedule hereto such further and additional rent (the service charge) being subject to the following terms and provisions

- (a) the amount of the service charge shall be ascertained and certified by a certificate..... signed by the Lessor's managing agents as experts and not as arbitrators annually and as soon after 31st December in each year as may be practicable
- (b) A copy of the Certificate for each year shall be supplied by the Lessors to the Lessee on written request and without charge to the lessee
- (c) The certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessors during the year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge
- (d) Deals with the question of payments for a sinking fund which was determined by the Tribunal on the preliminary issue
- (e) Provides for the payment of an interim service charge at the time of the payment of ground rent and in advance of expenditure being incurred if required to do so by the managing agents at their discretion as a fair and reasonable interim payment ...
- (f) As soon as practicable after the signature of the certificate the Lessors shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question
- (g) Provides that no forfeiture shall arise for non payment of the interim service charge but that action may be taken to recover the amounts payable
- (h) Makes provisions relating to the commencement and the determination of the term
- 17 By clause 5(2) of the lease the lessor covenanted to keep the building insured and by clause 5(6) the lessor covenanted:-
“That (subject to the payment of the rent and service charge) the Lessors will maintain and keep in good and substantial repair and condition
- (i) the main structure of the building including the foundations and the roof thereof with its gutters and rain water pipes
- (ii) all....gas and water pipes drains and cables....
- (iii) the forecourt area main entrance and stepsincluding the erection thereon for the storage of dustbins and the boundary walls and fences...
- (iv) the main entrance hall passages landings and staircases within the Building

(v) *the entryphone system*

Provided that the Lessors shall not be liable to the Lessee for any defect or want of repair..... unless the Lessors have had written notice thereof “

- 18 Clause 5(7) imposes a duty on the Lessors to paint the exterior of the building at intervals of not less than every five years; and by clause 5(8) the landlord covenanted to “*use its best endeavours to keep clean decorated and carpeted and reasonably lighted the said entrance hall passages landings staircases and other parts of the Building enjoyed or used by the Lessee in common with others.*”
- 19 By clause 5(9) the landlord covenanted to do all such acts as necessary to register the Lessee’s title against the Lessor’s freehold title of the premises
- 20 The Fifth Schedule sets out the various heads of expenditure for which the lessee is required to pay a proportion of the service charge. In particular Clause 5 specifies “*The fees of the Lessor’s managing agents for the collection of the rents of the flats in the Building and for the general management thereof provided that the fees shall at no stage exceed the maximum ... allowed by the scales authorised for the time being by the Royal Institute of Chartered Surveyors*”
- 21 In 1990 the present landlord entered into a deed of variation with all the lessees affirming that it would perform and observe all the landlord’s covenants in the leases
- 22 By clause 2 of the deed of variation the lessees covenanted
“(c) to pay the fees and disbursements paid to any Managing Agents appointed by the Company but if the Company does not appoint such agents it shall be entitled to add a sum not exceeding 10% of the total of any expenditure incurred by the Company under the provision in the leases for administration. Any expenses incurred by the Landlord shall be paid in the proportion of one quarter by each Lessee except where the Landlord shall direct that any expenditure shall be divided in different proportions where for instance any individual Lessee or Lessees have by his or her or their default caused the expenditure or where the expenditure can be divided in such a way that the proportions can relate to less in number and all the lessees of the building.... and any dispute ...shall be resolved in accordance with clause 3(2) of the lease.

The Issues

- 23 The outstanding issues between the parties related to the service charge accounts from the date of purchase of the property by the Applicant and his wife in February 2004 up to the end of the service charge year ending 31st August 2004. Service charges for the period up to the date of purchase had been discharged by Barclays Bank save for an issue relating to the repairs to the roof which were charged to the account of Flat 4, on the ground that the previous lessee Mr Derek Draper had been responsible for damage to the roof.
- 24 A number of items were agreed between the parties at the hearing but the following issues remained outstanding for determination by the Tribunal :-
- (a) whether there was a credit on the account of Mr Partridge on the basis that Barclays had overpaid the lessor in respect of the earlier service charge period
 - (b) a figure in respect of insurance charges for the year ending August 2004. The Applicant admitted liability to pay his proportion of the sum of £771.75 for building insurance but disputed the sum of £246.75 for professional indemnity insurance
 - (c) Companies House registration fees in the sum of £15
 - (d) Professional fees of a surveyor Mr Roger Oakley dated 8th August 2003 in the sum of £506.89 in respect of a second report prepared by him in connection with the condition of the roof and other repairs
 - (e) A sum of £58 for cleaning charges for work undertaken by Mr Schehtmann the leaseholder of Flat 1 and the company secretary to the bin area and stairwell. The leaseholder denied that such charges were recoverable under the lease but accepted that if it was recoverable the sum was reasonable.
 - (f) A sum of £893 in respect of work carried out to flat 2 by Amwell Construction in April 2004.
 - (g) A professional survey in connection with proposed Section 146 proceedings in the sum of £657
 - (h) Legal fees incurred in connection with advice on such proceedings
 - (i) A management fee of £1000 being half the figure of £2000 per flat claimed by Mr Schehtmann based on a resolution passed by the directors in November 2002

25 In addition the Applicant sought a determination that the costs incurred by him in the repair of the roof namely £4,230 should be borne equally by all the leaseholders and that three quarters of the cost should be offset against his liability for service charges

The Facts

26 The Tribunal found the following facts. The Respondent is the freehold owner of 46 Chalcot Crescent. It is a limited company the directors of whom are the lessees of Flats 1 2 and 3 at the address. Mr Schehtmann the leaseholder of Flat 1 is the secretary and undertakes many of the duties on behalf of the company. The chairman is Mr Jackson of Flat 3

27 The previous owner of Flat 4 was Mr Derek Draper, a former political adviser. In about 2002 Mr Draper went to America leaving the flat in the possession of an associate but failed to pay the service charges due. The associate later vacated and ultimately Flat 4 was abandoned and the mortgagee Barclays Bank took possession and discharged the arrears in order to avoid a forfeiture

28 In early 2004 the bank arranged for the leasehold interest in the flat to be sold by auction and the company had intended to bid for it. In the end the Applicant purchased the lease for the sum of £405,000 at auction on 11th February 2004. The other leaseholders, in particular Mr Schehtmann, were very suspicious of Mr Partridge's motives thinking him to be a property developer, and the situation was made worse in that shortly after purchase Mr Partridge permitted a television crew to take some film of the premises without consulting the other residents.

29 Although the bank had discharged most of the arrears there was still outstanding the question of repairs to the flat roof of the property, which was immediately above Flat 4. Mr Schehtmann and the company were of the opinion that the condition of the roof had been caused entirely by the activities of Mr Draper holding parties on the roof and placing large pots there which had damaged the surface.

30 Mr Schehtmann therefore made a demand that Mr Partridge should discharge all the arrears of service charge including sums alleged to be due for management fees and 100% of the estimated costs of the repair of the roof before his title would be recognised, and before he could be allotted his share in the company. A number of the items claimed were unclear to Mr Partridge;

many seemed unjustified and supporting information was not supplied at the time

- 31 The Tribunal accepts that this was the case, as even at the hearing various items in support of the amounts claimed had not been supplied and further documents were produced at the adjourned hearing which resulted in the claims being amended or reduced. The final account for the period up to 31st August 2004 was not produced until the hearing on 10th January 2005 and showed variations from the amounts originally claimed as set out in the schedule prepared by Mr Petts at the adjourned hearing.
- 32 Mr Partridge tried to discuss the matters in dispute with Mr Schehtmann without success and cheques, which were sent in respect of undisputed charges, were not paid in by the company. He had a meeting at Mr Jackson's flat in May 2004 and as a result it was agreed that he would be allocated his share on giving an indemnity to the directors. He gave the indemnity but did not receive the share
- 33 Mr Partridge endeavoured to reach agreement with the Lessors on a number of issues but was unsuccessful. Accordingly he decided to proceed with the refurbishment work on this flat and to carry out the repair works to the roof.. This he undertook with the original contractors who had tendered for the work R Brooks in the sum of £4,230. The Respondents took the view that this was a breach of the terms of the lease and served a notice under Section 146 of the Law of Property Act but have not issued any proceedings in respect of this to date.

The Tribunal's Decision on the Issues

- 34 The Tribunal was satisfied that the accounts kept by Mr Schehtmann were not satisfactory and that Mr Partridge had been justified in challenging the items, which were demanded from him. The attitude of Mr Schehtmann was less than co-operative to Mr Partridge and that for all these reasons, even if consent had not been forthcoming to the appointment of a manager the Tribunal would have considered that there were grounds for making such an order and that it was in the best interest of the property that such an order was made.
- 35 The Tribunal was also satisfied that Mr Pearl the proposed manager was a fit and proper person to discharge the functions of manager even though he had had limited experience of managing a block of flats. He was generally aware

- of the functions which he was required to perform, was willing to liaise fully with all the parties (an important feature as there had been a breakdown in communication between them) and his charges appeared to be reasonable.
- 36 With regard to the items of service charge in dispute the Tribunal found that the building insurance was recoverable in the sum of £770.75 but that the figure for professional indemnity of the directors was a company expense and not properly chargeable to the service charge account. Likewise the Companies House registration fees were a liability of the company alone.
- 37 With regard to the cleaning charge Mr Schehtmann stated that the work to the bin area was carried out by him and that it was for the benefit of all the flats. He stated that if a cleaner were employed the costs would be much higher. The lease permits recovery of service charge for cleaning and the Tribunal considers that the amount charged is not excessive and that the Applicant should pay his share of the charge at £58. It was contended that it was not recoverable under Clause 5 of the fifth Schedule, which covers the costs of cleaning, but this clause does appear to cover the area of which the Applicant has either use or benefit with regard to the bins.
- 38 With regard to the items for surveyors and legal fees in connection with the preparation of the Section 146 notice in connection with the work carried out by the lessee. There is a clause in the lease, Clause 3 (f), which requires the lessee to pay the costs of forfeiture notices whether proceeded with or not. The Applicant contends that the Section 146 notice was invalid and unreasonably invoked, but such costs are not service charges and the Tribunal considers that it has no jurisdiction to make any determination in connection with these costs. and that in the event of the parties' failure to agree the issue must be resolved by the court.
- 39 The sum of £893 in relation to the repair at Flat 2 is not recoverable at this stage. It has not been paid by the landlord but by Mrs Jackson the leasehold owner of Flat 2. Attempts have been made apparently unsuccessfully so far to recover the costs of the repair from her insurers. If recovery is not made the Manager will have to consider whether to discharge it and seek recovery in the next service charge account.
- 40 With regard to the second report prepared by Mr Oakley the surveyor, it should be noted that the original report was prepared in 2001 at a cost of

£427.70 and that the second report was obtained in 2003 to update the position with regard to the flat roof. The Applicant contends that the second report was not necessary, covered ground already dealt with in the first report and was excessive in cost, The Tribunal is of the opinion that it was necessary for the landlord to obtain an updated report from Mr Oakley on the condition of the roof and it is not possible to say that the cost of the report was excessive.

Accordingly the landlord is entitled to include it in the service charge accounts. The costs of the report was paid as to half by Barclays Bank so that the amount recoverable for the period up to August 2004 is £253.50 and the Applicant's share is £63.40

- 41 With regard to the condition of the flat roof, there is conflicting evidence from two surveyors Mr Oakley for the landlord and Rodgers and Associates who was instructed by Mr Partridge in march 2004. Mr Oakley is of the opinion that the condition of the roof is due to the placing of furniture and large pots on the roof whereas Mr Rodgers is of the opinion that the asphalt is beyond its natural life and is probably over 30 years old. Neither surveyor was called to give evidence .so that it was not possible to test their evidence by cross-examination.
- 42 It is likely that the flat roof would have required repair at some point at the landlord's expense but it is very probable that the placing of the furniture and pots on the asphalt accelerated the process. The Tribunal is of the opinion that half the costs should be borne by the owner of Flat 4 and that the balance should be borne by the four flats equally, so that the Applicant must bear five eighths of the total cost of the works namely £2643.75 and is entitled to credit of £1,586.25 against his ultimate liability to the service charge account.
- 43 With regard to the management fee the Tribunal is of the opinion that the position is covered by clause 2(c) in the variation of lease agreement. Since no managing agent has been appointed the maximum recoverable under this clause is 10% of the total expenditure incurred by the lessor in administration of the premises.
- 44 Whilst it might be argued that this figure should include the incurring of legal and surveying expenses which might be recoverable other than by service charge.(i.e those incurred in the Section 146 notices) the Tribunal is of the opinion that the figure should be limited to those items recoverable as part of

the service charge account. Thus taking the figures allowed by the Tribunal on the annual figure allowed by the Tribunal under the above headings, namely building insurance in the sum of £771, cleaning bin costs £175, other cleaning £252, electricity £78 and Mr Oakley's report in the sum of £507 the total expenditure amounts to just under £1800 so that the liability of the lessees would be £180. On that basis Mr Partridge's share would be £45. If one included the additional legal and surveying costs there would be added a further £4,800 making an additional sum of £480.

- 45 However it must be borne in mind that Barclays Bank have paid £1000 towards the management fees for the half year up to February 2004. Since this figure exceeds the amount recoverable under the lease it would seem unreasonable to expect Mr Partridge to pay any further sum by way of management charges and the Tribunal accordingly disallows any further sum
- 46 Whilst the Tribunal accepts that the other directors agreed to make payments of £2000 per annum to Mr Schehtmann this is a voluntary payment in excess of his entitlement under the lease and is not binding on Mr Partridge. .

Section 20C costs

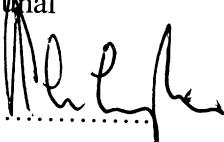
- 47 It is unclear as to whether the lease enables the costs of proceedings before the Tribunal to be added to the service charge account. Clause 5 of the fifth Schedule set out above relates to the fees of managing agents but Mr Schehtmann is not a managing agent within the meaning of that clause. The only other clause which might apply is clause 8, which provides for contribution towards complying with contesting or making representations against legislation or orders which affect the premises, but in the view of the Tribunal this does not cover the representation before a leasehold valuation tribunal on a service charge issue.
- 48 In any event the Tribunal has considered whether if any clause in the lease should enable the landlord to recover the costs of the proceedings by way of service charge, whether all or part of such costs should be disallowed.
- 49 In the light of the Tribunal's findings in relation to the service charge issues the fact that the actions of Mr Schehtmann made the issue of this application inevitable, and that the Tribunal has seen fit to reduce the service charge amounts and to appoint a manager, the Tribunal would direct that no costs should be added to the service charge account in respect of the lease of Flat 4.

50 The effect of this will probably mean that the costs will have to be paid by the company and in practice by the directors of the company in such proportions as they may agree.

Conclusion

- 51 The Applicant is not entitled to any refund in respect of the alleged overpayment by Barclays Bank and for the sake of completeness any existing service charge liability which Barclays Bank did not discharge remains due. However where the payment made by Barclays exceeds the total amount found due the Applicant is not required to make any further payment as in the case of the management fee.
- 52 The Applicant's liability in respect of roof repairs is limited to 50% of the costs of repairs plus one quarter of the balance making a total of 5/8ths of the total costs and is entitled to credit the balance against his service charge liability
- 53 The Applicant's liability for service charges on the remaining items is as set out in Paragraphs 36 to 45 above
- 54 No costs of these proceedings should be paid by the Applicant by way of future service charge, and the Respondent should reimburse the Applicant the costs of both applications and the hearing fee, which he has paid to the Tribunal

Chairman



Date ...31st March 2005

REF LON 00AG/LAM/2004/0019

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF PART II THE LANDLORD AND TENANT
ACT 1987

**AND IN THE MATTER OF 46 CHALCOT CRESCENT LONDON
NW1 8YD**

BETWEEN

MICHAEL PARTRIDGE

Applicant

and

CHALCOT CRESCENT (MANAGEMENT) CO LIMITED

Respondent

ORDER

**Upon hearing Mr P Petts of Counsel for the Applicant and Mr J Schehtman, the
Company Secretary, on behalf of the Respondent**

BY CONSENT IT IS ORDERED

- 1 That Mr Laurence Pearl FNAEA of Saffron Property Limited
(hereinafter called "the manager") be and is hereby appointed manager
of the property known as 46 Chalcot Crescent ("the property") for a
period of 5 years from 1st January 2005 in accordance with the terms of
Paragraphs 3 6 and 7 of this Order.**

- 2 The property comprises 4 flats known as flats 1 to 4 in an end of terrace
house with a forecourt and side access and a rear garden demised to the
lessee of Flat 1. The names and addresses of the lessees of flats 1 to 4 and**

the name and registered address of the Respondent are set out in the Appendix

- 3 During the period of his appointment the manager shall, subject to the provision in paragraph 4 of this Order, collect and apply in accordance with this Order the following:-**
 - (a) the ground rents reserved on flats 1,2 3 and 4 in the property**
 - (b) the service charges(including insurance contributions) payable in accordance with the leases of flats 1,2 ,3 and 4 in the property**
 - (c) the balance of any contributions held by the Respondent in respect of any sums paid by the leaseholders as ground rents, or service charges standing to the credit of the service charge account as at 1st January 2005**
- 4 The manager shall not be entitled to collect any sum whatsoever from the leaseholders which fell due for payment before 1st January 2005 but for the avoidance of doubt he shall be entitled to collect any balance standing to the credit of the service charge account from the Respondent and further shall be entitled to collect any sums due from the leaseholders which fall due after that date and have not been paid including any payments due in accordance with Paragraph 3 above.**
- 5 The Respondent by its servant or agent J Schehtman shall disclose to the manager all documents held by him or by his agents or advisers as the manager may reasonably require for the proper management of the property.**
- 6 The terms of the appointment of the manager shall be in accordance with the terms of the manager's standard agreement as set out in his letter to the Respondent dated 2nd November 2004 and the terms of his remuneration shall be at the rate of 15% of the total sums payable in respect of each of the flats 1 to 4 in the property subject to an annual minimum figure of £1,000 and to an initial take over charge of £50 per unit .**
- 7 The duties of the manager shall be in accordance with the terms of his letter to the Respondent dated 2nd November 2004 but will also include the following whether or not they are specified therein :-**

- (a) Arranging for the satisfactory completion of all works in progress at the property, if any, at the date of his appointment.
- (b) Preparing and agreeing with the Applicant, the lessees of flats 1, 2 and 3 and the Respondent as the owner of the building an annual service charge budget including if necessary a sinking fund provision.
- (c) Preparing a maintenance plan for the regular repair and redecoration of the exterior and common parts of the property as may be required during the period of management
- (d) Dealing expeditiously with routine repairs
- (e) Reviewing the current arrangements if any for the repair and maintenance of the entryphone system and to arrange for the system to be maintained or replaced as may be appropriate.
- (f) Observing the Respondent's covenants in the individual leases of the flats.
- (g) Enforcing the lessees' covenants in the leases of the individual flats within the building
- (h) Monitoring and ensuring quality and "value for money" in the services provided to the property
- (i) Complying with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended by the Commonhold and Leasehold Reform Act 2002 and in accordance with the Government approved RICS Code of Management Practice (ISBN 085466438) or any successor code which may be introduced in substitution thereof and is currently in force.

- 8 Annually during the period of his appointment at a convenient date the manager shall provide the Respondent as owner of the property with an itemised account of the ground rents received from flats 1,2 3, and 4 together with any interest accrued thereon and to pay the Respondent such sums as may be due to it
- 9 The manager shall submit to the Tribunal regular reports no less frequently than once in each year and twice in the first year of his appointment concerning the performance of his duties and the condition of the property

- 10 This Order shall be registered in accordance with Section 24(8) of the Landlord and Tenant Act 1987
- 11 The Applicant, the Respondent , the manager or the leaseholders of flats 1,2 or 3 or of flat 4 in the event that the Applicant shall cease to be leaseholder of such flat shall be at liberty to apply to a Leasehold Valuation Tribunal of the London Rent Assessment Panel for further directions under or a variation of the terms of this order

Chairman

Date 20/12/04...