RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case nos : **CAM/26UK/LSC/2006/0034 & 0053**

Property : **1–12 & 14–43 The Spinney, Church Road, Watford, Herts WD17 4QF**

Applications : For determination of liability to pay service charges for year 2006 :

a. Proposed expenditure on roofing works [2006/0034]

b. Proposed expenditure on curtain walling (windows to common parts) & proposed works to garages [2006/0053]

[LTA 1985, s.27A]

Applicant : Reo Estates and Property Management Company Limited, c/o Rayners, The Old Parish Hall, Godstone, Surrey RH9 8DR

Respondents : The lessees of all flats on the estate, as listed in the two applications

DECISION (PAPER DETERMINATION)

Handed down : 29th November 2006

Tribunal : **G K Sinclair, Miss M Krisko BSc (Est Man) FRICS, & L Jacobs FRICS**

Inspection date : Friday 24th November 2006

Summary

1. In August 2004 the Applicant freeholder commenced statutory consultation procedures with the leaseholders of every flat in this late 1960s development of 3-storey residential blocks. Its intention was to carry out essential repairs to the flat roofs of every building, to replace the damaged timber and glass curtain walling to the front and rear of each communal staircase, and to continue the programme of replacing individual blocks of prefabricated concrete garages (one block having already been completed by previous managing agents).

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case nos : **CAM/26UK/LSC/2006/0034 & 0053**

Property : **1–12 & 14–43 The Spinney, Church Road, Watford, Herts WD17 4QF**

Applications : For determination of liability to pay service charges for year 2006 :

a. Proposed expenditure on roofing works [2006/0034]

b. Proposed expenditure on curtain walling (windows to common parts) & proposed works to garages [2006/0053]

[LTA 1985, s.27A]

Applicant : Reo Estates and Property Management Company Limited, c/o Rayners, The Old Parish Hall, Godstone, Surrey RH9 8DR

Respondents : The lessees of all flats on the estate, as listed in the two applications

DECISION (PAPER DETERMINATION)

Handed down : 29th November 2006

Tribunal : **G K Sinclair, Miss M Krisko BSc (Est Man) FRICS, & L Jacobs FRICS**

Inspection date : Friday 24th November 2006

Summary

1. In August 2004 the Applicant freeholder commenced statutory consultation procedures with the leaseholders of every flat in this late 1960s development of 3-storey residential blocks. Its intention was to carry out essential repairs to the flat roofs of every building, to replace the damaged timber and glass curtain walling to the front and rear of each communal staircase, and to continue the programme of replacing individual blocks of prefabricated concrete garages (one block having already been completed by previous managing agents).

2. Most but not all leaseholders belong to a leaseholders' association, but it is described by the Applicant freeholder in each application as "only an informal association". Notices therefore had to be served upon each and every leaseholder. Tenders were invited for the re-roofing works and 6 replies were received. After a very considerable delay the tenderers were invited to confirm or revise their prices. Four did so; the preferred contractor doing so on 17th February 2006. The second statutory consultation stage took place in 2005 and again, following the repricing, in March 2006. There have been no objections. The tribunal was informed during the inspection that the contractor has agreed to hold his February price. On that basis the proposed cost is approved.

3. Only two tenders were received for the curtain walling contract. The prices were very far apart, which causes the tribunal concern. Again, the pricing relied upon is very old (August 2005 for the preferred contractor), and the tribunal has been shown neither tender; instead seeing merely letters referring to additions and savings. Acting solely on the limited information before it the tribunal does not consider that it can have enough confidence in the tendering process or the proposed contract figure to say that this is a reasonable price which every leaseholder should be compelled to pay. However, were the tribunal faced with an application[1] for dispensation with the statutory consultation requirements then it would be content if the freeholder immediately sought fresh tenders from at least the proposed contractor (Pro-Fix) and a new, third contractor, following which a new second stage consultation on timing of the works and other practical issues would be all that would be necessary.

4. On a careful analysis of the lease the tribunal notes that the service charge provisions are unusual, in many respects unsatisfactory or defective, and fail to place responsibility for maintenance and repair of the structure of the garages (as opposed to their insurance) on either party. Despite this, acting on certain apparent understandings, money has been collected for certain purposes (although partly deployed for others) despite the absence of any provisions for the operation of a sinking fund or the payment for such works under the maintenance charge. Management of the estate would be improved if responsibility for the managing agents was placed firmly with the freeholder, if the latter were able to deal directly with one recognised leaseholders association instead of a multiplicity of individual leaseholders, and if the service charge provisions in each lease were varied (preferably by consent, or in default by application to the Leasehold Valuation Tribunal).

Relevant lease provisions

5. Each application has been accompanied by a copy lease. Although for different flats, the terms of each lease are in all material respects the same. As discussed below, confusion has been caused by the word "Building" in clause 1, where the lessor

> ...demises unto the lessee ALL THAT tenement or flat and garage described in the Third Schedule hereto (hereinafter called "the demised premises") in the block of forty-two flats situate in The Spinney Church Road Watford ... (which block of flats is hereinafter referred to as "the Building")...

6. Clause 2 sets out the lessee's covenants, which include payment of the annual rent, the

[1] See the Landlord and Tenant Act 1985, s. 20ZA

2. Most but not all leaseholders belong to a leaseholders' association, but it is described by the Applicant freeholder in each application as "only an informal association". Notices therefore had to be served upon each and every leaseholder. Tenders were invited for the re-roofing works and 6 replies were received. After a very considerable delay the tenderers were invited to confirm or revise their prices. Four did so; the preferred contractor doing so on 17th February 2006. The second statutory consultation stage took place in 2005 and again, following the repricing, in March 2006. There have been no objections. The tribunal was informed during the inspection that the contractor has agreed to hold his February price. On that basis the proposed cost is approved.

3. Only two tenders were received for the curtain walling contract. The prices were very far apart, which causes the tribunal concern. Again, the pricing relied upon is very old (August 2005 for the preferred contractor), and the tribunal has been shown neither tender; instead seeing merely letters referring to additions and savings. Acting solely on the limited information before it the tribunal does not consider that it can have enough confidence in the tendering process or the proposed contract figure to say that this is a reasonable price which every leaseholder should be compelled to pay. However, were the tribunal faced with an application[1] for dispensation with the statutory consultation requirements then it would be content if the freeholder immediately sought fresh tenders from at least the proposed contractor (Pro-Fix) and a new, third contractor, following which a new second stage consultation on timing of the works and other practical issues would be all that would be necessary.

4. On a careful analysis of the lease the tribunal notes that the service charge provisions are unusual, in many respects unsatisfactory or defective, and fail to place responsibility for maintenance and repair of the structure of the garages (as opposed to their insurance) on either party. Despite this, acting on certain apparent understandings, money has been collected for certain purposes (although partly deployed for others) despite the absence of any provisions for the operation of a sinking fund or the payment for such works under the maintenance charge. Management of the estate would be improved if responsibility for the managing agents was placed firmly with the freeholder, if the latter were able to deal directly with one recognised leaseholders association instead of a multiplicity of individual leaseholders, and if the service charge provisions in each lease were varied (preferably by consent, or in default by application to the Leasehold Valuation Tribunal).

Relevant lease provisions

5. Each application has been accompanied by a copy lease. Although for different flats, the terms of each lease are in all material respects the same. As discussed below, confusion has been caused by the word "Building" in clause 1, where the lessor

> ...demises unto the lessee ALL THAT tenement or flat and garage described in the Third Schedule hereto (hereinafter called "the demised premises") in the block of forty-two flats situate in The Spinney Church Road Watford ... (which block of flats is hereinafter referred to as "the Building")...

6. Clause 2 sets out the lessee's covenants, which include payment of the annual rent, the

[1] See the Landlord and Tenant Act 1985, s. 20ZA

repair and maintenance in repair of the interior of the demised premises, compliance with regulations, etc.

7. Clause 3 sets out the management and service charge provisions. By clause 3(I) the lessee is required to pay either the lessor (as trustee to pay to the managing agent) or directly to the managing agent a maintenance contribution equal to one forty-second part of all moneys expended by the managing agent

> ...for doing the things hereinafter comprehensively referred to as "maintenance" specified in the Second Schedule hereto and shall also pay to the Managing Agent on demand an equal proportion with all other lessees in the said Building of the moneys expended by the Managing Agent for the upkeep and maintenance of the gardens and footpaths and the necessary wires aerial and other apparatus to facilitate reception of television.

8. By clause 3(ii) the lessee is required to pay in advance on 30th June and 31st December in each year the sum of £30 on account of the net half year's service charges. By clause 3(iii), immediately after each half year the managing agent is to serve on the lessee a duly certified notice in writing stating the actual amount incurred on maintenance for the preceding half year, whereupon the lessee is to remit the balance.

9. By clause 4 the lessor agrees from time to time to appoint a managing agent

> ...who by the terms of his contract shall be responsible to the lessor and to all the lessees for the time being of the flats in the Building for superintending maintenance...

And, whenever no such managing agent is appointed, the lessor shall so act until a new managing agent is appointed.

10. Most unusually, however, clause 5 provides that the lessor will take all reasonable steps to secure payment of maintenance contributions and will also use all reasonable endeavours to secure the performance by the managing agent of the duties imposed upon him by his contract

> ...but in regard to such duties the Managing Agent shall be deemed to be the agent of the lessee and the Lessor shall not be responsible to the lessee for his acts or defaults.

11. The Second Schedule lists the "maintenance purposes" in some detail. References in paragraphs 1, 2, 3, 6 and 7 to the "Building" should be contrasted with that in paragraph 8 to "insuring the Building and garage". The way in which the word "Building" is used in the Third Schedule also suggests that it refers only to the block in which the flat is situate, in contradistinction to the words "demised premises" which refer also to the garage and associated rights of way, etc.

Applicable law

12. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are

repair and maintenance in repair of the interior of the demised premises, compliance with regulations, etc.

7. Clause 3 sets out the management and service charge provisions. By clause 3(I) the lessee is required to pay either the lessor (as trustee to pay to the managing agent) or directly to the managing agent a maintenance contribution equal to one forty-second part of all moneys expended by the managing agent

> ...for doing the things hereinafter comprehensively referred to as "maintenance" specified in the Second Schedule hereto and shall also pay to the Managing Agent on demand an equal proportion with all other lessees in the said Building of the moneys expended by the Managing Agent for the upkeep and maintenance of the gardens and footpaths and the necessary wires aerial and other apparatus to facilitate reception of television.

8. By clause 3(ii) the lessee is required to pay in advance on 30th June and 31st December in each year the sum of £30 on account of the net half year's service charges. By clause 3(iii), immediately after each half year the managing agent is to serve on the lessee a duly certified notice in writing stating the actual amount incurred on maintenance for the preceding half year, whereupon the lessee is to remit the balance.

9. By clause 4 the lessor agrees from time to time to appoint a managing agent

> ...who by the terms of his contract shall be responsible to the lessor and to all the lessees for the time being of the flats in the Building for superintending maintenance...

And, whenever no such managing agent is appointed, the lessor shall so act until a new managing agent is appointed.

10. Most unusually, however, clause 5 provides that the lessor will take all reasonable steps to secure payment of maintenance contributions and will also use all reasonable endeavours to secure the performance by the managing agent of the duties imposed upon him by his contract

> ...but in regard to such duties the Managing Agent shall be deemed to be the agent of the lessee and the Lessor shall not be responsible to the lessee for his acts or defaults.

11. The Second Schedule lists the "maintenance purposes" in some detail. References in paragraphs 1, 2, 3, 6 and 7 to the "Building" should be contrasted with that in paragraph 8 to "insuring the Building and garage". The way in which the word "Building" is used in the Third Schedule also suggests that it refers only to the block in which the flat is situate, in contradistinction to the words "demised premises" which refer also to the garage and associated rights of way, etc.

Applicable law

12. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are

set out in section 27A of the Landlord and Tenant Act 1985.[2] Provided that the application is made to the tribunal after 30th September 2003 these powers apply irrespective of whether the costs were incurred before the coming into force of this new section.[3] No application under section 27A(1) or (3) may be made in respect of a matter which has been agreed or admitted by the tenant, has been (or is to be) referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, or has been the subject of determination by a court or by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

13. However, please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)[4] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

14. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs[5] :
    a. only to the extent that they are reasonably incurred, and
    b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

15. This is subject to a further limitation on costs incurred in respect of major works or long-term agreements, where the cost is an amount which results in the relevant contribution of any one or more tenants being more than £250 (for major works) or £100 in any one accounting period (for long-term agreements).[6] In such cases the relevant contributions of tenants are limited to that amount unless the consultation requirements have been either :
    a. complied with in relation to the works or agreement, or
    b. dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.[7]

The inspection

16. The Spinney is a pleasant-looking cul de sac residential development off Church Road,

2 However, the section does not confer a discretion on the tribunal to give such time to lessees as it thinks reasonable to make payments for service charges. Sums found to have been reasonably payable by way of service charges are payable at the date and in the manner provided for in the lease under which the lessee holds his or her premises : *Southend-on-Sea Borough Council v Skiggs & ors* [2006] 21 EG 132 (Lands Tribunal)

3 See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [IS 2003/1986], Article 2(c) and Schedule 2, para 6

4 Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

5 Including the costs of insurance

6 Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987

7 Landlord and Tenant Act 1985, s.20 (as amended by the Commonhold and Leasehold Reform Act 2002)

set out in section 27A of the Landlord and Tenant Act 1985.[2] Provided that the application is made to the tribunal after 30th September 2003 these powers apply irrespective of whether the costs were incurred before the coming into force of this new section.[3] No application under section 27A(1) or (3) may be made in respect of a matter which has been agreed or admitted by the tenant, has been (or is to be) referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, or has been the subject of determination by a court or by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

13. However, please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)[4] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

14. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs[5] :
    a. only to the extent that they are reasonably incurred, and
    b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

15. This is subject to a further limitation on costs incurred in respect of major works or long-term agreements, where the cost is an amount which results in the relevant contribution of any one or more tenants being more than £250 (for major works) or £100 in any one accounting period (for long-term agreements).[6] In such cases the relevant contributions of tenants are limited to that amount unless the consultation requirements have been either :
    a. complied with in relation to the works or agreement, or
    b. dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.[7]

The inspection

16. The Spinney is a pleasant-looking cul de sac residential development off Church Road,

2 However, the section does not confer a discretion on the tribunal to give such time to lessees as it thinks reasonable to make payments for service charges. Sums found to have been reasonably payable by way of service charges are payable at the date and in the manner provided for in the lease under which the lessee holds his or her premises : *Southend-on-Sea Borough Council v Skiggs & ors* [2006] 21 EG 132 (Lands Tribunal)

3 See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [IS 2003/1986], Article 2(c) and Schedule 2, para 6

4 Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

5 Including the costs of insurance

6 Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987

7 Landlord and Tenant Act 1985, s.20 (as amended by the Commonhold and Leasehold Reform Act 2002)

Watford which was constructed in the late 1960s. Six flats, on three floors, share a common entrance lobby and staircase. The full height of both front and rear walls of each staircase comprises obscure Georgian wired glass within painted softwood frames. This six-flat cluster is the basic unit of the development, with two sets of two-cluster blocks and one triple. Each block has a flat roof. The tribunal was shown around by Mr John Beasley, chairman of the Spinney Residents Association, in the company of Robert Sawyer of the current managing agents, Rayners. A number of the timber window frames to the staircases were observed to be suffering significantly from rot and many glazing units had one or more large cracks. According to Mr Beasley the roof covering is asphalt, which appears crazed in places. Mr & Mrs Westcott said that it had been repaired shortly after they had arrived, probably in the early 1980s. As access to the roof can only be obtained by importing a ladder or scaffold the tribunal was unable to inspect this area, although damp patches in the ceilings of several staircases were observed. Later the tribunal met Mr Tylden-Pattenson, who was anxious to ensure that the tribunal had indeed noted such signs of water ingress.

17. In the southeast corner of the development are the garages; one for each flat. One block of nine garages had been replaced in the recent past with new prefabricated aggregate faced precast concrete panels and ribbed metal roofing, but the rest were of rather less decorative precast concrete panels with corrugated asbestos roofing. Despite recent replacement, the new block was observed to have quite a lot of vegetation growing from blocked guttering concealed behind the panel above the doorways. In this area the tribunal was able to inspect the inside of Mr & Mrs Westcott's garage, one of the originals, where guttering along the underside of the joint in the asbestos roof sheeting connected to a diagonal downpipe was being used to prevent water dripping on to their car.

The roofing works

18. The tribunal was concerned at the duration of the section 20 consultation procedure. There was a very lengthy delay between the first stage (27th August 2004) and the second, post-tender stage (23rd March 2005). Why the work was not carried out then is not known by the tribunal, but nearly one year later the companies were asked to refine their tender figures. On this occasion only four responded, but the balance shifted from the first preferred contractor (Dual Roofing) to another (Breyer). On 20th March 2006 the managing agents repeated their second stage consultation, and the tribunal was informed (to its surprise) that the price given this year still held. In future such a lengthy consultation process would be viewed with disfavour but as the leaseholders are keen that the work be done, no negative responses have been received, and on the basis that the contract price is no higher than notified in March 2006, the tribunal will agree that the work to be done is reasonable and the price, based on a good number of tenders received, is acceptable.

19. This section 27A application is therefore granted.

The curtain walling to stairways

20. Again, both the freeholder and leaseholders seem keen to get on with this work, and no

Watford which was constructed in the late 1960s. Six flats, on three floors, share a common entrance lobby and staircase. The full height of both front and rear walls of each staircase comprises obscure Georgian wired glass within painted softwood frames. This six-flat cluster is the basic unit of the development, with two sets of two-cluster blocks and one triple. Each block has a flat roof. The tribunal was shown around by Mr John Beasley, chairman of the Spinney Residents Association, in the company of Robert Sawyer of the current managing agents, Rayners. A number of the timber window frames to the staircases were observed to be suffering significantly from rot and many glazing units had one or more large cracks. According to Mr Beasley the roof covering is asphalt, which appears crazed in places. Mr & Mrs Westcott said that it had been repaired shortly after they had arrived, probably in the early 1980s. As access to the roof can only be obtained by importing a ladder or scaffold the tribunal was unable to inspect this area, although damp patches in the ceilings of several staircases were observed. Later the tribunal met Mr Tylden-Pattenson, who was anxious to ensure that the tribunal had indeed noted such signs of water ingress.

17. In the southeast corner of the development are the garages; one for each flat. One block of nine garages had been replaced in the recent past with new prefabricated aggregate faced precast concrete panels and ribbed metal roofing, but the rest were of rather less decorative precast concrete panels with corrugated asbestos roofing. Despite recent replacement, the new block was observed to have quite a lot of vegetation growing from blocked guttering concealed behind the panel above the doorways. In this area the tribunal was able to inspect the inside of Mr & Mrs Westcott's garage, one of the originals, where guttering along the underside of the joint in the asbestos roof sheeting connected to a diagonal downpipe was being used to prevent water dripping on to their car.

The roofing works

18. The tribunal was concerned at the duration of the section 20 consultation procedure. There was a very lengthy delay between the first stage (27th August 2004) and the second, post-tender stage (23rd March 2005). Why the work was not carried out then is not known by the tribunal, but nearly one year later the companies were asked to refine their tender figures. On this occasion only four responded, but the balance shifted from the first preferred contractor (Dual Roofing) to another (Breyer). On 20th March 2006 the managing agents repeated their second stage consultation, and the tribunal was informed (to its surprise) that the price given this year still held. In future such a lengthy consultation process would be viewed with disfavour but as the leaseholders are keen that the work be done, no negative responses have been received, and on the basis that the contract price is no higher than notified in March 2006, the tribunal will agree that the work to be done is reasonable and the price, based on a good number of tenders received, is acceptable.

19. This section 27A application is therefore granted.

The curtain walling to stairways

20. Again, both the freeholder and leaseholders seem keen to get on with this work, and no

adverse responses have been received to this application. Mr Sawyer and Mr Beasley also stated that this really needs to be done before the roofing works, because of some interrelated detailing issues. Again, the delay to date has not been explained. The first stage of the consultation process began on 27th August 2004, in the same notice as for the roofing works. However, for this work only two tenders were received :

Pro-Fix Services Ltd £140,738.35
Structura Curtainwall Engineering £297,480.00

These figures do not include VAT, surveyors' or management fees.

21. The tribunal is puzzled by the significant discrepancy between these two tenders. It has not seen the actual tenders; only two letters dated 9th August and 17th August 2005 respectively, in which adjustments are made to prices already given due to suggested alterations in the specification. (Quite what adjustments in the specification were made, and why, is not known). In the case of Structura the original figure was £222,015.00. As for Pro-Fix, paragraph 8 of its letter states that it will have to adjust its original quote of £118,354.90 to £136,314.90 because it had quoted only for six staircases instead of seven. How the figure climbed to £140,738.35 is not made clear.

22. In this case the second stage of the consultation process was initiated by notice dated 1st November 2005. While again Mr Sawyer stated that the company was prepared to hold its price the tribunal would be extremely surprised by this, as building costs have risen in recent years and it is very unlikely that this work could be started before the spring of 2007 – over 18 months after the tender date. During the inspection the tribunal was told by Mr & Mrs Westcott that the leaseholders' contributions had already been collected for this work, so the reason for bringing this application is wholly unclear. The tribunal is in no position to judge the accuracy of this statement, but if the parties are all agreed about what should be done and its price why is it necessary to seek approval under the Act?

23. Unfortunately, while it recognises the urgent need for this work to be undertaken – and preferably before the roofing contract – the tribunal's task is to determine on the evidence before it that the cost sought to be levied form the leaseholders for this work is reasonable. With two very old, poorly explained and wildly divergent tender prices the tribunal is driven to ask whether each company tendered on precisely the same basis. The two-stage consultation process is again extremely drawn out, but unlike that for the roofing work there has been no 2006 revision exercise. No further tenders have been sought. How then can the tribunal assess with any confidence that the Pro-Fix price is a reasonable market price, and that it will be held to even after such a long time? This application would therefore have to be dismissed on the basis of insufficient evidence

24. However, were this tribunal faced with an application under section 20ZA to dispense with some or all of the consultation criteria then it would be content to require only an immediate re-tendering from Pro-Fix and at least one other company apart from or in addition to Structura, followed by the normal second stage consultation with leaseholders about timing and any other practical contract issues. That would not unduly postpone the award of the contract (which can precede the second stage) and, as it is extremely unlikely that the work could start before the spring of 2007, this ought not to cause any real delay to both this and the roofing contract.

adverse responses have been received to this application. Mr Sawyer and Mr Beasley also stated that this really needs to be done before the roofing works, because of some interrelated detailing issues. Again, the delay to date has not been explained. The first stage of the consultation process began on 27th August 2004, in the same notice as for the roofing works. However, for this work only two tenders were received :

Pro-Fix Services Ltd £140,738.35
Structura Curtainwall Engineering £297,480.00

These figures do not include VAT, surveyors' or management fees.

21. The tribunal is puzzled by the significant discrepancy between these two tenders. It has not seen the actual tenders; only two letters dated 9th August and 17th August 2005 respectively, in which adjustments are made to prices already given due to suggested alterations in the specification. (Quite what adjustments in the specification were made, and why, is not known). In the case of Structura the original figure was £222,015.00. As for Pro-Fix, paragraph 8 of its letter states that it will have to adjust its original quote of £118,354.90 to £136,314.90 because it had quoted only for six staircases instead of seven. How the figure climbed to £140,738.35 is not made clear.

22. In this case the second stage of the consultation process was initiated by notice dated 1st November 2005. While again Mr Sawyer stated that the company was prepared to hold its price the tribunal would be extremely surprised by this, as building costs have risen in recent years and it is very unlikely that this work could be started before the spring of 2007 – over 18 months after the tender date. During the inspection the tribunal was told by Mr & Mrs Westcott that the leaseholders' contributions had already been collected for this work, so the reason for bringing this application is wholly unclear. The tribunal is in no position to judge the accuracy of this statement, but if the parties are all agreed about what should be done and its price why is it necessary to seek approval under the Act?

23. Unfortunately, while it recognises the urgent need for this work to be undertaken – and preferably before the roofing contract – the tribunal's task is to determine on the evidence before it that the cost sought to be levied form the leaseholders for this work is reasonable. With two very old, poorly explained and wildly divergent tender prices the tribunal is driven to ask whether each company tendered on precisely the same basis. The two-stage consultation process is again extremely drawn out, but unlike that for the roofing work there has been no 2006 revision exercise. No further tenders have been sought. How then can the tribunal assess with any confidence that the Pro-Fix price is a reasonable market price, and that it will be held to even after such a long time? This application would therefore have to be dismissed on the basis of insufficient evidence

24. However, were this tribunal faced with an application under section 20ZA to dispense with some or all of the consultation criteria then it would be content to require only an immediate re-tendering from Pro-Fix and at least one other company apart from or in addition to Structura, followed by the normal second stage consultation with leaseholders about timing and any other practical contract issues. That would not unduly postpone the award of the contract (which can precede the second stage) and, as it is extremely unlikely that the work could start before the spring of 2007, this ought not to cause any real delay to both this and the roofing contract.

The garages

25. The tribunal has read the correspondence with both the current and previous managing agents, notes that one garage block has been replaced at the expense of all leaseholders, and that a further contribution was obtained to replace the remainder of the garages but was then diverted to deal with urgent roof repairs on one block of flats. It agrees that the replacement of the original garages is desirable. The problem is the lease.

26. The tribunal considers that the Second Schedule simply does not allow the freeholder or the managing agent to recover the cost of such work from the maintenance charge. The lease appears to suffer from a lacuna, in that nowhere is the responsibility for structural repairs to the garages spelt out. This is because of the way in which the lease purports inadequately to define the word "Building". In the tribunal's determination the reference to insuring both "the Building and garage" must mean that the garages are not included within the definition of the former. This would also be consistent with the use of the word in paragraphs 1, 2, 3 and 6 of the Second Schedule. As the things which may be charged for as "maintenance" are supposed to be comprehensively described in the Schedule even a purposive construction cannot get around the bad drafting of the lease.

27. Under the present wording of the lease, therefore, the cost of the repairing or replacing the garages is not provided for. Money collected for such a purpose before was so applied, and the second tranche was diverted to essential roof repairs. Had this tranche not been paid, therefore, the money would correctly have been recoverable under the lease for the work to the roof. that is not to say that the parties cannot agree between themselves that it would be more convenient for the freeholder or managing agent to organise a redevelopment contract, as suggested. As it is not presently covered by the lease, however, and as the garages would require to be replaced in entire blocks, it would only take one obstructive leaseholder to abort the whole deal.

General observations

28. As mentioned to both Mr Beasley and Mr Sawyer on site, there are many areas where the service charge provisions in the current leases are inadequate for the management of the building on a sound basis at the start of the twenty-first century. Issues identified include

    a. The managing agent's appointment by the lessor, responsibility under its contract to both lessor and lessees for the carrying out of its duties, yet its status (in case of any breach) as agent only of the lessees
    b. The restriction of the managing agent's fees to a sum to be determined by the lessor, not to exceed five per cent of the annual rateable value of the "Building" (in this case meaning the combined rateable values of all forty-two flats). Neither Mr Beasley nor Mr Sawyer was aware what this figure might be but as rateable values for residential property have not increased in many years this formula does not allow for inflation
    c. The fixed twice-yearly interim instalments of only £30, with consequent drawing up of accounts and submission of adjustment statements every six months instead of annually. This increases accounting costs and postage
    d. The lack of any sinking fund

The garages

25. The tribunal has read the correspondence with both the current and previous managing agents, notes that one garage block has been replaced at the expense of all leaseholders, and that a further contribution was obtained to replace the remainder of the garages but was then diverted to deal with urgent roof repairs on one block of flats. It agrees that the replacement of the original garages is desirable. The problem is the lease.

26. The tribunal considers that the Second Schedule simply does not allow the freeholder or the managing agent to recover the cost of such work from the maintenance charge. The lease appears to suffer from a lacuna, in that nowhere is the responsibility for structural repairs to the garages spelt out. This is because of the way in which the lease purports inadequately to define the word "Building". In the tribunal's determination the reference to insuring both "the Building and garage" must mean that the garages are not included within the definition of the former. This would also be consistent with the use of the word in paragraphs 1, 2, 3 and 6 of the Second Schedule. As the things which may be charged for as "maintenance" are supposed to be comprehensively described in the Schedule even a purposive construction cannot get around the bad drafting of the lease.

27. Under the present wording of the lease, therefore, the cost of the repairing or replacing the garages is not provided for. Money collected for such a purpose before was so applied, and the second tranche was diverted to essential roof repairs. Had this tranche not been paid, therefore, the money would correctly have been recoverable under the lease for the work to the roof. that is not to say that the parties cannot agree between themselves that it would be more convenient for the freeholder or managing agent to organise a redevelopment contract, as suggested. As it is not presently covered by the lease, however, and as the garages would require to be replaced in entire blocks, it would only take one obstructive leaseholder to abort the whole deal.

General observations

28. As mentioned to both Mr Beasley and Mr Sawyer on site, there are many areas where the service charge provisions in the current leases are inadequate for the management of the building on a sound basis at the start of the twenty-first century. Issues identified include

    a. The managing agent's appointment by the lessor, responsibility under its contract to both lessor and lessees for the carrying out of its duties, yet its status (in case of any breach) as agent only of the lessees
    b. The restriction of the managing agent's fees to a sum to be determined by the lessor, not to exceed five per cent of the annual rateable value of the "Building" (in this case meaning the combined rateable values of all forty-two flats). Neither Mr Beasley nor Mr Sawyer was aware what this figure might be but as rateable values for residential property have not increased in many years this formula does not allow for inflation
    c. The fixed twice-yearly interim instalments of only £30, with consequent drawing up of accounts and submission of adjustment statements every six months instead of annually. This increases accounting costs and postage
    d. The lack of any sinking fund

e. The problem of responsibility for garage repairs

f. The failure to allow not only for repairs and replacements but also for making such improvements to the buildings, etc as the lessor considers reasonable. One problem mentioned to the tribunal was the need to obtain individual lessees' consent for the installation of telephone door entry systems.

29. These matters could be resolved by the making of agreed variations to the lease or, in default of unanimity, the making of an appropriate application to the Leasehold Valuation Tribunal under section 37 of the Landlord and Tenant Act 1987. Any such application can only be made, in a case where the application is in respect of more than eight leases, if it is not opposed for any reason by more than 10 per cent of the total number of the parties concerned and at least 75 per cent of that number consent to it.

30. Another practical matter drawn to the attention of those present was the supposedly unofficial status of the leaseholders association. Where there are a large number of flats in a development such as this having a recognised leaseholders association makes the lessor's consultation obligations so much simpler and cheaper. It does not have to write to everyone, thus reducing the cost to be passed on as part of the service charge. If the lessor will not agree to recognise the current association (assuming it has a proper constitution, etc and a named secretary) then it is open to the association to apply to the Leasehold Valuation Tribunal for official recognition. This is binding upon the lessor.

31. Finally, the tribunal regrets its inability to grant the application for approval of the cost of the curtain walling. If the current price is acceptable to the leaseholders, or a further confirmatory tendering process demonstrates that Pro-Fix's price is reasonable, then by agreement almost anything is possible. Should only one or two leaseholders disagree then the onus would be upon them to challenge the amount sought as unreasonable by bringing their own section 27A application.

Dated 29th November 2006

Graham Sinclair — Chairman
for the Leasehold Valuation Tribunal

e. The problem of responsibility for garage repairs

f. The failure to allow not only for repairs and replacements but also for making such improvements to the buildings, etc as the lessor considers reasonable. One problem mentioned to the tribunal was the need to obtain individual lessees' consent for the installation of telephone door entry systems.

29. These matters could be resolved by the making of agreed variations to the lease or, in default of unanimity, the making of an appropriate application to the Leasehold Valuation Tribunal under section 37 of the Landlord and Tenant Act 1987. Any such application can only be made, in a case where the application is in respect of more than eight leases, if it is not opposed for any reason by more than 10 per cent of the total number of the parties concerned and at least 75 per cent of that number consent to it.

30. Another practical matter drawn to the attention of those present was the supposedly unofficial status of the leaseholders association. Where there are a large number of flats in a development such as this having a recognised leaseholders association makes the lessor's consultation obligations so much simpler and cheaper. It does not have to write to everyone, thus reducing the cost to be passed on as part of the service charge. If the lessor will not agree to recognise the current association (assuming it has a proper constitution, etc and a named secretary) then it is open to the association to apply to the Leasehold Valuation Tribunal for official recognition. This is binding upon the lessor.

31. Finally, the tribunal regrets its inability to grant the application for approval of the cost of the curtain walling. If the current price is acceptable to the leaseholders, or a further confirmatory tendering process demonstrates that Pro-Fix's price is reasonable, then by agreement almost anything is possible. Should only one or two leaseholders disagree then the onus would be upon them to challenge the amount sought as unreasonable by bringing their own section 27A application.

Dated 29th November 2006

Graham Sinclair — Chairman
for the Leasehold Valuation Tribunal