LEASEHOLD VALUATION TRIBUNAL

OF THE

MIDLAND RENT ASSESSMENT PANEL

BIR/00FY/LAC/2006/0001

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION
UNDER PARAGRAPH 5 OF SCHEDULE 11
TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Applicants:	Ms V M Bates (leaseholder) Ms M Taylor (leaseholder)
Respondent:	Southern Land Securities Ltd (freeholder)
Subject properties:	24 and 30 Woodstock Avenue Bobbersmill Nottingham NG7 5QP
Date of application to LVT:	3 September 2006
Hearing date:	13 February 2007
Appearances:	
For the applicants:	Ms M Taylor Ms V M Bates
For the respondent:	Mr B Taylor Ms L Gilbert
Members of the Tribunal:	Professor N P Gravells MA Mr G S Freckelton FRICS Mr M H Ryder
Date of determination:	16 FEB 2006

Application

1 This is a decision on an application made to the Leasehold Valuation Tribunal under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the determination of the liability to pay an administration charge.

2 The application was originally made by Ms M Taylor, leaseholder of 30 Woodstock Avenue, Bobbersmill, Nottingham NG7 5QP; but, pursuant to the standard procedure for identifying other interested parties, Ms M V Bates, leaseholder of 24 Woodstock Avenue, was subsequently joined as an applicant.

3 The respondent freeholder is Southern Land Securities Ltd; and the properties are managed by Hamilton King Management Ltd ("Hamilton King").

Background

4 The properties at 24 and 30 Woodstock Avenue ("the subject properties") are two maisonettes in a development of forty ground floor and first floor maisonettes on Woodstock Avenue. The properties are held on 99-year leases from 1 June 1978; and the leases are in similar terms.

5 Since about 2000, many of the leaseholders in the development have decided to replace the original windows – generally because those windows no longer provide effective and adequate insulation.

6 The freeholders argue that under the terms of the lease, the leaseholders must obtain the written approval of the freeholder and pay an administration charge, which the freeholders have determined at £89.00. The applicants dispute the obligation to obtain approval and to pay the administration charge.

7 Having received a copy of the original application, Hamilton King, acting on instructions from the freeholder, wrote to Ms Taylor, indicating that, "so as to keep a good relationship between the managing agent and residents", no charge would be made in connection with the grant of approval for replacement windows at 30 Woodstock Avenue. However, when Ms Bates was subsequently joined as an applicant, no similar gesture was made to her.

Inspection and hearing

8 On 13 February 2007, the members of the Tribunal carried out an external inspection of the development and, in particular, of the subject properties.

9 A hearing was subsequently held at the offices of the Nottingham Voluntary Action Centre. It was attended by Ms Bates and Ms Taylor; and by Mr B Taylor and Ms L Gilbert, of Hamilton King Management Ltd, representing the freeholders.

Representations of the parties

10 Ms Taylor, on behalf of the applicants, submitted that the leaseholders were required by the terms of the lease to replace the windows. She referred to clause 3 of the lease, which sets out the tenant's covenants, and specifically to subclause (3) by which the tenant covenants –

"To keep the interior of the demised premises and every part thereof ... in tenantable repair ... and it is hereby declared and agreed that there is included in this covenant as repairable by the Tenant (including replacement whenever such shall be necessary) the ceilings and floors of the demised premises .... There are also included in this covenant the windows of the demised premises ...."

11 Ms Taylor argued that it had become necessary for the leaseholders of properties on the development to replace the windows because the original windows, wood framed and single-glazed, no longer provided effective or adequate insulation, with the result that there was an excessive loss of the heat generated by the leaseholders' central heating systems. She also argued that the installation of uPVC double-glazed windows was not simply a matter of good financial sense but a response to the wider issue of global warming.

12 According to Ms Taylor, it followed that the leaseholders should not be required to obtain and to pay for approval for carrying out work that they were obliged to carry out under the terms of the lease.

13 Mr Taylor, on behalf of the freeholder, relied on clause 3(6) of the lease, by which the tenant covenants –

"Not to make any alterations in the demised premises without the approval in writing of the Landlord to the plans and specifications thereof and to make all such alterations in accordance with such plans and specifications. The tenant shall at his own expense in all respects obtain all licences approval of plans permissions and other things necessary for the carrying out of such alterations ...."

14 He submitted that the replacement of the original wood framed, single-glazed windows with uPVC double-glazed units of a different design constituted an alteration of the subject properties within the meaning of clause 3(6).

15 In reply, Ms Taylor argued that the installation of uPVC double-glazed units was the only sensible response to the replacement obligation contained in clause 3(3); and that it was unreasonable to hold that that response constituted an alteration of the subject properties.

16 In response to questions from the Tribunal, Ms Taylor submitted that, if the Tribunal held that the leaseholders were required to obtain and to pay for approval for replacing the windows, a reasonable charge would not exceed £10.00. Mr Taylor submitted that the charge of £89.00 reflected the reasonable costs of the work generated by a request for approval, namely the retrieval of a copy of the lease from the solicitors, the perusal of the plans for the replacement windows, the consideration of the request for approval and the drafting of the licence.

Determination of the Tribunal

17 The Tribunal gave full consideration to the submissions of the parties.

18 Although each party relied on a different provision in the lease (the applicant focusing on clause 3(3), the respondent focusing on clause 3(6)), and there was even some suggestion that the two clauses are in conflict, the Tribunal finds that the two clauses create a coherent regime. Clause 3(3) imposes an obligation on the leaseholder to carry out repairs (including replacements when necessary). However, where the leaseholder elects to repair or replace in a manner that involves the alteration of the property, clause 3(6) requires the leaseholder to obtain and to pay for the approval of the freeholder.

19 It follows that the first issue is whether the replacement of the windows by the applicants amounts to an "alteration" of the subject properties within clause 3(6), with the consequence that the applicants are required to obtain and to pay for the approval of the respondent. The Tribunal accepts that there is some force in the applicants' argument that the installation of uPVC double-glazed units is the most sensible response to the repair/replacement obligation contained in clause 3(3). Nonetheless, in the view of the Tribunal, the changes in structure (single- to double-glazing) and in material (wood to uPVC) constitute an alteration within clause 3(6). Moreover, arguably the predominant concern of the freeholder, reflected in clause 3(6), is to maintain control over the design and visual appearance of the properties in the development as a whole. If individual leaseholders were free to alter the design of their windows in any way they chose, the potential result of a range of incompatible designs could adversely affect the interests of both freeholder and leaseholders. For these reasons, the Tribunal finds that the installation by the applicants of the uPVC double-glazed units of a design different from that of the original windows constitutes an "alteration" of the subject properties.

20 It follows that, pursuant to clause 3(6), the applicants are required to obtain the written approval of the freeholder.

21 Clause 3(6) further provides that the leaseholder is required to pay the costs incurred by the freeholder in connection with the grant of that approval. Such a charge clearly falls within the meaning of "administration charge" in paragraph 1(1) of Schedule 11 to the 2002 Act (in particular paragraph 1(1)(a)). However, since the charge is a "variable administration charge" within the meaning of paragraph 1(3), by virtue of paragraph 2 the charge is payable "only to the extent that the amount of the charge is reasonable".

22 In the view of the Tribunal, the approval process inevitably involves the freeholder in some professional costs and the determination of what is a reasonable administration charge must reflect the level of professional fees. It follows that the figure of £10.00 suggested by the applicants is wholly unrealistic. On the other hand, the Tribunal finds that the Mr Taylor's description of the approval process overstates the complexity of the process and the time required to complete it. Moreover, since the need to replace windows very probably affects most of the properties in the development, it should be possible for the freeholder to take advantage of economies in the repetition of that process. In the circumstances, the Tribunal determines that a reasonable administration charge would be £50.00 (plus VAT if applicable) and that any charge in excess of that amount would be unreasonable and not payable by the applicants.

23 It follows that, if Ms Bates has already paid £89.00 in connection with the grant of approval for replacement windows at 24 Woodstock Avenue, she is entitled to repayment of the excess over £50.00 (and VAT if applicable).

24 The position of Ms Taylor is not wholly clear-cut. As noted above, at the time that she made the present application, she had not paid the administration charge payable under the terms of the lease; and the respondent subsequently indicated that she would be not be charged for the grant of approval. However, as a matter of law, that undertaking by the respondent is not binding in the absence of some reciprocal consideration on the part of Ms Taylor, most obviously the withdrawal of her application. Although Ms Taylor did not formally withdraw her application in response to the respondent's undertaking, she did contact the Tribunal office and indicate her assumption that the case would be closed; and the Tribunal finds that the proper inference is that thereafter she was no longer pursuing the application in so far as it related to her property. That finding is not contradicted by the fact that she attended the hearing and addressed the Tribunal. As secretary of the residents' association and the person who initiated the challenge to the administration charge, it was not unreasonable for her to continue to be involved in the application in so far as it related to the property of Ms Bates and as representative of Ms Bates. The Tribunal therefore holds that, by reason of the binding undertaking on the part of the respondent, Ms Taylor is not liable to pay any administration charge in connection with the grant of approval for replacement windows at 30 Woodstock Avenue.

Summary

25 The Tribunal determines –

- that the replacement of windows by the applicants constitutes an alteration of the subject properties within the meaning of clause 3(6) of the lease;
- that, notwithstanding the obligation imposed on the applicants by clause 3(3) of the lease, the applicants were therefore required to obtain approval to replace the windows and to pay a reasonable administration charge in connection with the grant of that approval;
- that a reasonable administration charge would be £50.00 (plus VAT if applicable) and that any charge in excess of that amount would be unreasonable and not payable;
- that, on the assumption that Ms Bates has already paid £89.00 in connection with the grant of approval for replacement windows at 24 Woodstock Avenue, she is entitled to repayment of the excess over £50.00 (and VAT if applicable);
- that, pursuant to the binding undertaking on the part of the respondent, Ms Taylor is not liable to pay any administration charge in connection with the grant of approval for replacement windows at 30 Woodstock Avenue.

Signed Nigel Gravells
(Professor Nigel P Gravells (Chairman))

Dated 16 FEB 2006