LON/00BJ/LIS/2006/0034

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A and S20C OF THE LANDLORD & TENANT ACT 1985

Applicant: Mr G P Sunda

Respondent: London Borough of Wandsworth

Re: 461 Tildesley Road, London SW15 3BE

Application date: 7 March 2006

Hearing dates: 21 and 22 September and 9 October 2006

Appearances:

Miss C Revere of Counsel
Mr P Lafferty, Solicitor, Lloyd & Associates LLP
Mr G P Sunda

For the Applicant

Mr G Bedloe of Counsel
Mrs E Parrette, Leasehold Services Manager
Miss S King – Pupil to Mr G Bedloe

For the Respondent

Members of the Residential Property Tribunal Service:

Mrs J S L Goulden JP
Mrs E Flint DMS FRICS IRRV
Mrs M B Colville JP LLB

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PROPERTY: 461 TILDESLEY ROAD, LONDON, SW15 3BE

BACKGROUND

1. The Tribunal was dealing with the following applications, all of which were dated 7 March 2006

   a) an application under Section 27A of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the 1985 Act") for a determination of liability to pay service charges

   b) an application to limit landlord's costs of proceedings under Section 20C of the Act.

   c) an application for the variation of a lease or leases under Part IV of the Landlord and Tenant Act 1987 (hereinafter referred to as "the 1987 Act")

   d) an application for the liability to pay or for the variation of an administration charge under schedule 11 to the Commonhold and Leasehold Reform Act 2002 (hereinafter referred to as "the 2002 Act").

2. The Applicant, Mr G P Sunda, holds 461 Tildesley Road, London, SW15 3BE (hereinafter referred to as "the property") under a lease dated 10 February 1986 and made between the Respondent, The Mayor and Burgesses of the London Borough of Wandsworth (1) and the Applicant (2) for a term of 125 years from 10 February 1986 at a peppercorn rent and subject to the terms and conditions therein contained.

3. County court proceedings issued in Wandsworth County Court on 5 July 2005 had been stayed pending a determination by the LVT. The determination of the Tribunal is in respect of the applications under S27A and S20C of the 1985 Act only, the issues raised in the other applications having been adjourned at the hearing on 21 September 2006 for a paper determination (see paragraph 24 below).

INSPECTION

4. The estate was inspected by the Tribunal on 19 October 2006 (after the conclusion of the hearing) in the presence of Mr G P Sunda.

   It was a very large (1960's) local authority estate of mainly five storey residential blocks with some commercial units, car parking and a children's play area.

5. The estate was well kept overall with extensive grounds including grassed areas set with trees and shrubs. Some weeds were noted both in flowerbeds

and also between the paving. Several areas were strewn with items of rubbish including bulky items such as a mattress and white goods.

6. The Tribunal noted the poor condition of some of the metal railings on the estate, some small areas of disrepair and ponding on the access road to Mr Sunda's block in front of the entrance doors.

7. The Tribunal was invited to inspect internally Mr Sunda's block and his flat. Entry was by entryphone. The common parts were spartan and were being swept during the Tribunal's inspection. In Mr Sunda's flat, the Tribunal was asked to inspect his balcony, the external paintwork to the balcony and the stay to a window in the bedroom.

HEARINGS

8. The Hearing took place on 21 and 22 September and 9 October 2006.

Hearing on 21 September 2006

9. The Applicant, Mr G P Sunda, attended and was represented by Miss C Revere of Counsel and Mr P Lafferty, Solicitor, of Lloyd & Associates LLP.

10. The Respondent, The London Borough of Wandsworth, was represented by Mr G Bedloe of Counsel and Mrs E Parrette, Leasehold Services Manager. Miss S King, Pupil to Mr Bedloe attended. The hearing on 20 September was taken up by a preliminary application on behalf of the Applicant to adjourn.

11. On 20 September 2006 the Applicant's solicitors had written (and faxed) a letter to the Tribunal which stated, inter alia, *"we are instructed to make application for an adjournment of proceedings when the matter comes on for hearing tomorrow"*.

12. At the hearing on 21 September 2006, Miss Revere, for the Applicant, made a formal application for an adjournment of all the proceedings before the Tribunal. Witness statements from Mr Sunda (dated 21 September 2006) and his Solicitor, Mr Lafferty (dated 20 September 2006) were provided in support. The application was opposed by Mr Bedloe for the Respondent. The respective submissions and the Tribunal's determination are set out below.

The Applicant's application for an adjournment of Tribunal proceedings

13. In submissions in support of the application to adjourn, Miss Revere said that the application was made on health grounds and on the basis that the Applicant had been unable to prepare his case. Since August 2006 (the date of the last hearing), Mr Sunda had continued to receive treatment which had taken a toll on his health. He was unable to conduct the case himself. He had approached a firm of solicitors in July 2006, but they had declined instructions. Miss Revere's instructing solicitors had only recently been instructed.

14. Miss Revere said that it was clear that Mr Sunda had not fully understood the issues previously. Accounting evidence was required in order to show that the Respondent was getting in more money than it spent and this would be a ground for the variation of lease application. A forensic accountant had been identified and was to be instructed to provide expert evidence. She confirmed that no instructions had yet been given to the accountants, since that would depend on whether the Tribunal acceded to her request for an adjournment. She requested an adjournment of two months in order to obtain the expert evidence required.

15. Miss Revere said that it was in the interests of justice to grant an adjournment because Mr Sunda was unable to produce the expert evidence which would be required. She said *"the benefit outweighs the prejudice"*.

16. In submissions opposing the application to adjourn, Mr Bedloe said that it was clear from the hearing held on 14 August 2006 that the Tribunal did not consider that this was a case which required representation. Any further adjournment would result in prejudice to the Respondent in view of the delay which had and would occur. He said that it was well over a year since proceedings against the Applicant had been issued in the county court, and this was an exceptionally long period of time for his Client to be without funds. Hearings had repeatedly been adjourned.

17. Mr Bedloe said that on the 2 June 2006, the Tribunal's Pre Trial Review had taken a considerable length of time because the applications had not been clear and the Chairman at that review had had to *"thrash out the issues"*. However since that time, and apart from the applications and correspondence, no evidence had been forthcoming from Mr Sunda. Indeed, Mr Bedloe said that he would invite the Tribunal to dismiss the case for want of evidence.

18. With regard to the application to vary the lease, Mr Bedloe said that the Respondent had invited the Applicant to enter into a Deed of Variation in 1989, but the Applicant had refused. Mr Bedloe explained that the Applicant is being charged a percentage of the estate costs, since he holds an "old style" lease. The proposed Deed of Variation (which had not been taken up by Mr Sunda) would change the percentage so that the Applicant would pay a percentage of the block costs i.e. a higher percentage of a lower figure. This was as per the "new style" lease. In addition, there would be a moderate administration charge of some £300. Mr Bedloe referred the Tribunal to correspondence in support.

19. The Tribunal adjourned the hearing in order to consider the submissions on both sides.

The Tribunal's determination in respect of the application for an adjournment

20. Under the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, Regulation15(2) states:-

"Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –

(a) the grounds for the request;
(b) the time at which the request is made: and
(c) the convenience of the parties"

21. In this case, the Tribunal was of the view that:-

a) The grounds supplied by Mr Sunda were insufficient. No new factors had been raised by Mr Sunda at the hearing. They had to a great extent all been raised by him earlier and considered by the Tribunal following his several earlier written and oral successful applications for an adjournment;

b) The application for an adjournment was made very late in the day, namely at the commencement of the first day's hearing, even though Mr Sunda's solicitors, in a witness statement dated 20 September 2006, confirmed that they had been instructed on 5 September 2006. Further, although at the hearing on 14 August 2006, Mr Sunda had been aware that the next hearing date was to be 21 September, in his witness statement of 21 September 2006 he confirmed that the first time he had instructed solicitors after the 14 August 2006 hearing was 5 September 2006. This delay is considered unacceptable.

c) The Respondent was resisting the application and the Tribunal must consider the interests of both sides. In addition the county court proceedings had been issued some time ago and had been stayed pending the Tribunal's determination.

22. The Tribunal has taken into account that the application was made to the Tribunal as long ago as 7 March 2006 and no evidence has been supplied by or on behalf of the Applicant, although Miss Revere confirmed that he had collated some evidence including photographs. Mr Sunda had however been able to enter into detailed correspondence with the London Rent Assessment Panel.

23. The Tribunal has also taken into account the nature of Mr Sunda's illness and it is pleased to note from Miss Revere that he is now in remission. Mr Sunda's illness was also taken into account at the previous hearing which had been listed for 14 and 15 August 2006. The Tribunal must consider proportionality and the cost to the public purse of repeated adjournments.

24. The Tribunal allowed a partial adjournment, namely of that part of the case relating to lease variation which was, with the agreement of the parties attending, adjourned to be dealt with at a Paper Hearing before the same members of the Tribunal. Further Directions were issued on the 22 September 2006.

25. The service charge issues went over to be heard on 22 September 2006 and Mr Sunda was given the remainder of 21 September 2006 to collate his evidence before the next day's hearing.

26. The parties were notified of the Tribunal's decision as to the adjournment at the hearing on 21 September. In addition Mr Sunda, through his representatives, clarified the service charge matters which were to be challenged by him at the hearing on 22 September.

27. The Tribunal enquired of Mr Bedloe as to whether the S20C application was a live issue. Mr Bedloe said that he would discuss the matter overnight with his Clients in order to obtain instructions.

Hearing on 22 September 2006

28. At the hearing on 22 September, Mr Sunda attended but was unrepresented. Mr Bedloe of Counsel together with Mrs E Parrette appeared on behalf of the Respondent. Miss S King attended. Oral evidence was given by Mr Sunda and Mrs Parrette.

29. Mr Bedloe confirmed that the lease under which the property was held did not permit the Respondent to place the costs of proceedings before the Tribunal on the service charge account. Accordingly no determination is required of the Tribunal under S20C of the Act.

30. The issues disputed by Mr Sunda which required the determination of the Tribunal were as follows:-

Cost and standard of major works
Cleaning of common parts
Gardening and maintenance
Management fees
Insurance

31. The salient points in evidence and the determination of the Tribunal are given under each head.

32. As a general point, and as mentioned at the hearing, the Tribunal is critical of Mr Sunda in that although his application was dated over six months before the hearing, namely 7 March 2006, he had provided no written evidence in support of his case. This placed the Respondent at a distinct disadvantage and made the Tribunal's task much more difficult.

Cost and standard of major works

33. Mr Sunda confirmed that he was only challenging the cost and standard of the external decorations and repairs carried out in 2000-2001 in the sum of £294,558.17 (of which Mr Sunda's proportion was £884) and the external decorations and repairs carried out in 2003-2004 in the sum of £430,377.57 (of which Mr Sunda's proportion was £1,291.13). Although initially works in respect of roadways and paving (2000-2001), lift refurbishment in Tildesley

Road (2004-2005) and lighting protection works (2005-2006) were in issue, Mr Sunda confirmed that these items were no longer challenged.

34. Mr Sunda said that the Respondent had chosen the lowest tender and it was *"an atrocious job"*. He set out his complaints in respect of the standard of works carried out.

35. Mrs Parrette said two or three schemes had been carried out and there had been full consultation with leaseholders. The work had been supervised and all defects notified to the contractors. The Respondent was *"mindful of costs incurred and would only do what was necessary"*. She would arrange for Mr Sunda's complaints to be looked into.

36. From the documentation supplied, the works had been properly tendered, there had been full consultation and the lowest tender had been accepted. A full priced specification had been provided to the Tribunal. Mr Sunda had suggested that certain other works should have been carried out by the Respondent but the Tribunal's determinations are limited to the works actually carried out, the cost of which has been placed on the service charge account.

37. The Tribunal inspected the estate on 19 October 2006 (details of which are set out in paragraphs 4 to 7 above) and, taking into account the passage of time since the works were carried out, the Tribunal is of the view that the works which had been carried out and which had been charged to the service charge account, were of a reasonable standard.

38. The Tribunal determines that the sums of £294,588.17 in respect of external decorations and repairs in 2000-2001 and £430,377.57 in respect of external decorations and repairs in 2003-2004 are relevant and reasonably incurred and properly chargeable to the service charge account.

Cleaning of common parts

39. The service charge years in dispute were 2000 to 2005 and the amounts placed to the service charge account (as set out in a handwritten schedule prepared by Mr Bedloe) are as follows:-

Global	Applicant's contribution
1999/2000	
£78,929.72 (Estate)	£55.25
£19,800.61 (Block)	£59.40
2000/2001	
£97,399.81 (Estate)	£68.18
£20,964.18 (Block)	£62.89
2001/2002	
£66,167.85 (Estate)	£46.32
£29,980.73 (Block)	£89.94

2002/2003	
£66,385.15 (Estate)	£45.77
£30,688.19 (Block)	£92.00
2003/2004	
£65,286.71 (Estate)	£45.70
£30,863.98 (Block)	£92.59
2004/2005	
£67,248.91 (Estate)	£47.07
£37,133.74 (Block)	£96.40

40. Mr Sunda said *"they do the job extremely badly and a lot of time not at all".* He supplied copies of photographs in support, which he said had been taken between September 2005 and August 2006. In addition, Mr Sunda handed to the Tribunal a copy of a statement dated 14 September 2006, which had been signed by him and the tenants of Flats 455 and 463. This stated, inter alia:-

> *"We cannot remember a time when the cleaning contracts were fully kept to although every time we get an okay cleaner they are moved. There have been examples of gross negligence like throwing a bucket of water on to the first floor stairs and walking off. The cleaner leaves after just washing the ground floor with water. The floors above the ground floor are not washed. Cleaner does not have the adequate equipment to do the job and with no cleaning solutions except water most of the time. Cleaners frequently believe the best way to sweep four floors is to start at the top and then brush the dirt down to the ground floor via the side of the steps leaving deposits of dirt on the window sills or choosing to sweep the rubbish into the lift housing ending up where the lift mechanisms are there have been problems with this dirt blocking lift sensors and had continual trouble with being able to use the lift. In short we (tenants) are paying for a fictional contract that cannot be filled even if ISS wanted to since they do not have the staffing levels or equipment available to fulfill their contractual obligations."*

41. Mrs Parrette referred the Tribunal to the cleaning schedule which set out the frequency of cleaning. She said that the contract was monitored by the Estates Services Section mobile patrols 24 hours a day, seven days a week. They check the cleaning "*hopefully*" on a daily basis, unless there was an emergency, and reported back to their managers or supervisors. The mobile services were carried out throughout the whole of Wandsworth and she did not know how many people were employed, but she said that they were mostly ex-caretakers. Mrs Parrette said that there were written records and assumed that a general record was kept. In addition, there was a residents' complaints telephone line, where messages were taken off and dealt with. The cleaning contractors, ISS, had had their contract renewed in April 2006 and had managed the contract for five years previously. Once the issues had been notified to her at the hearing on 21 September, she confirmed that

a mobile patrol had been to the estate and the paladin area examined. This was noted to have been swept and cleaned. Mrs Parrette said that the Estate was Ashburton South and Ashburton Chartfield and was one of the largest estates in Putney.

42. The Tribunal, as stated above, inspected the estate on 19 October 2006 and its comments are set out in paragraphs 4 to 7 above.

43. It was also noted on inspection of Mr Sunda's block that the whole of the staircase to the common parts was only partially glazed and therefore open to the elements which must make cleaning considerably more difficult. The Tribunal has taken account of the size of the estate and block and has noted the difficulty in cleaning such large areas. The Tribunal has also taken account of Mr Sunda's service charge contribution in this respect.

44. The Tribunal determines that the amounts charged in respect of the cleaning of common parts for the service charge years in issue are relevant and reasonably incurred and properly chargeable to the service charge account.

Gardening and maintenance

45. The service charge years disputed were 2000 to 2005 and the amounts placed to the service charge account (as set out in a handwritten schedule prepared by Mr Bedloe) are as follows:-

Global	Applicant's contribution
1999/2000 £48, 920.24	£34.24
2000/2001 £53,156.56	£37.21
2001/2002 £81,676.06	£57.17
2002/2003 £63,871.56	£44.71
2003/2004 £37,985.44	£26.59
2004/2005 £103,500.12	£72.45

46. Mr Sunda provided photographs which he said had been taken between September 2005 and August 2006 in support of his contention that gardening and maintenance had been poorly carried out. He also provided a copy of a letter written to him by the Area Housing Manager dated 5 September 2005 in respect of the dumping of rubbish. Mr Sunda complained of blocked drains.

47. In the Response on behalf of the Respondent, it was stated that "*the costs for garden maintenance and cleaning are those which are incurred on a year by year basis. It should be noted that although there are a number of routine tasks which are undertaken on a weekly/monthly or annual basis there are also tasks which are undertaken on a periodic basis.....The Applicant has an "old style" lease in which the Block is defined as all the Blocks in Tildesley Road and all the blocks on both the Ashburton South and the Ashburton Chartfield estate.....it would seem that additional planting was carried out in 2004/2005 across both estates together with extra maintenance of the beds...the Respondent denies that the Applicant is paying three times the costs of any work done...the Applicant contributes only 30 pence in every £100 spent....*"

48. In evidence, Mrs Parrette said that the dumping of rubbish was a problem and refuse sacks were inspected for evidence and the offending residents written to.

49. She accepted that the photographs produced by Mr Sunda showed weeds. She would arrange for inspection of the blocked drains.

50. Having taken account the size of the estate and its grounds and also the amounts placed to the service charge and the Applicant's contribution, the Tribunal determines that the charges in respect of gardening and maintenance for the service charge years in issue are relevant and reasonably incurred and properly chargeable to the service charge account.

Hearing on 9 October 2006

51. Mr Bedloe had said on 22 September 2006 that other representatives for the Respondent would be required to give evidence in respect of the issues relating to insurance and management fees, and these aspects of the service charge went over to 9 October 2006.

52. At the hearing on 9 October 2006, Mr Sunda did not attend. Mr Bedloe appeared on behalf of the Respondent. Mrs Parrette, Mr M Hall, Deputy Chief Accountant and Mr L Ray-Mathur, Property Accounts Manager attended and all gave evidence for the Respondent.

53. At 11.50am a telephone call was received from Mr Sunda to say that he did not have a record that the hearing was due to take place on 9 October 2006. The Tribunal was advised that a letter had been sent to Mr Sunda by the Clerk to the Tribunal dated 25 September 2006 which had advised of the hearing date. In addition, the hearing date of 9 October 2006 had been arranged at the last hearing date on 22 September 2006, and Mr Sunda had been advised of that date at the hearing on 22 September 2006.

Insurance

54. The service charge years disputed were 2000 to 2005 and the amounts placed to the service charge account as follows:-

Global	Applicant's contribution
1999/2000 £92,000	£42.23
2000/2001 £90,000	£41.76
2001/2002 £103,000	£77.04
2002/2003 £112,250	(£13.13 (£69.21 (contribution to fund)
2003/2004 £119,750	(£14.49 (£70.97 (contribution to fund)
2004/2005 £124,500	£15.44 £82.46 (contribution to fund)

55. Mr Sunda's challenge was that the insurance premium *"suddenly"* went up after 9/11 and he suspected that the lessees were subsidising the Council's tenants.

56. In the response undated but prepared by Mrs Parrette, it was stated, inter alia

> *"The cost of building insurance depends mainly on the sum insured. In order to maintain adequate cover, the sum insured is increased for the new policy year (1st April annually) in line with advice from the Council's insurer, and historically this has tended to lead to increases slightly higher than general inflation.*
>
> *Other factors may affect the premium payable, such as major fluctuations in claims experience, or the extent of terrorist activity, but the Council regularly tests the market to ensure that insurance costs are competitive. Claims over £50,000 are dealt with by the insurer (currently Zurich Municipal). In order to meet claims below £50,000, the Council maintains a fund and has to obtain contributions from leaseholders instead of collective premiums. The combined cost of this contribution, together with the premium payable to Zurich Municipal, represents a substantially reduced cost when compared with standard insurance premiums.*
>
> *The fund was established in 2002 in order to minimize the cost of insuring properties. By taking a substantial excess on property claims, considerable savings were made in external premium spend. The fund is run at cost, ie there is no profit element as would be the case with*

premiums paid to insurers. Claims against the fund are only insurable losses, ie there is no difference in how claims are assessed, whether they be against the fund or external insurance cover. The insurer's policy conditions are used in assessing all claims, regardless of value. The main difference is that the Council deals with claims against the fund, appointing loss adjusters where appropriate. In relation to management of the fund, this is undertaken by staff within the Finance Department. Various factors are taken into account in determining the funding requirement, the main one being the previous year's claims experience. The Council also adds interest on balances held. The contribution to the fund is reviewed annually, with forecasts undertaken monthly to monitor performance".

57. Mrs Parrette, in evidence on 22 September 2006, said that the fund had been set up because *"Zurich premiums became prohibitive for low value claims".* She said that the Respondent insured tenanted flats, that tenanted flats were not insured in the same way as lessees' flats and it was not correct to say that the lessees subsidised the tenanted units.

58. Mr Hall, for the Respondent, said that as Deputy Chief Accountant, his function was to deal with the whole of the Council's insurance portfolio and he was involved directly with the establishment of the fund. He handed in a copy of written submissions dated 5 October 2006 headed "Arrangements for Housing Property Insurance".

59. Mr Hall said that the local authority had sought competitive tenders from insurers on at least a five yearly basis for each class of business. However, although insurance had been placed with Zurich Municipal on a Long Term Agreement ("LTA") for a five year period, the insurers wished to increase the block insurance rates in view of the claims experience. Mr Hall said that the insurers had breached the LTA terms in January or March 2002, the insurance being due for renewal on 1 April 2002. The Council had been forced to go out to tender again via a national leading broker, but there had been a poor response from the market.

60. In his submissions, it was stated:-

> *"Having compared claims experience on property with premium payments, it was clear that there was a large margin between the figures. Consequently, alternative quotations were sought based on the acceptance of a £50,000 excess (deductible) for each claim. The result indicated that substantial amounts of money could be saved by the Council (and consequently leaseholders too) by accepting this excess."*

61. Mr Hall said in evidence that in the first year, savings of approximately £500,000 had been made by setting up the fund. Mr Hall said that he had been aware of the lease and VAT implications and sought the advice of leading counsel as to whether there would be a breach of the lease terms and whether the Council would in effect become an insurer (with all the regulatory functions which would ensue). Counsel had advised that the new

arrangements would fulfil the Council's obligations under the lease and that the costs would be properly rechargeable to leaseholders under the lease.

62. In Mr Hall's submissions it was stated:-

> *"The Council continues to insure each block with "an insurance office of repute" as required under the lease. There is a £50,000 deductible (excess), and losses arising below this value are met from a fund set up for this purpose. The fund itself is also protected by the same insurer, so that if there were a run of claims in any policy year exceeding an annual threshold (currently £2 million), then insurance cover would operate.*
>
> *Cover and service has been maintained but the underlying accounting arrangements and claims handling altered in order to minimise costs."*

63. With regard to claims on the fund and the fund balance, it was stated:-

> *"As at 31st March, 2006 the fund stood at £1,388,589. However, the total claims outstanding up to 31st March 2006 is* [sic] *estimated at £684,035, leaving an available balance of £704,554. This coupled with the contributions mentioned above, has been used to meet claims settlements paid so far this year. The fund will also meet claims in progress now, and claims during the remainder of the financial year. The balance on the fund is kept under constant review.*
>
> *The fund is only used to meet payments for insurance losses, i.e. to meet insurable losses in accordance with the same criteria as detailed in the Council's insurance policy. In the event of a claim, there is a little difference in the administration of a claim to what happened previously. Normally a leaseholder is sent a claim form to complete and return, usually with two estimates, to the Insurance Section at the Town Hall. Where the claim is under £50,000, the claim would be dealt with in-house, with loss adjusters being appointed as appropriate. Effectively, the claimant sees little difference in the handling of the claim, except that it is Council staff dealing with it, and settlement can usually be achieved more quickly, as the postal delays previously involved in passing documentation on to the insurer no longer arise.*
>
> *Claims in respect of the tenanted stock, and common parts, are submitted by the Housing department under a "bulk claim" arrangement, with the tenant and leaseholders interests being reflected in each claim.*
>
> *Claims with a total value in excess of £50,000 are dealt with by the Council's insurers."*

64. Mr Hall confirmed that each lessee was provided with a summary of cover and the Respondent had absorbed the additional work involved in managing the fund. Monies were not kept in an interest-bearing account but the monies did earn interest in that the local authority had aggregate balances on various

internal accounts which earned interest at 4.6% based on figures provided by the Treasury Management Team on average balances held.

65. Mr Hall said in submissions that the benefits were as follows:-

> *"Concerted efforts were made by several staff within the Council, to secure significant savings, for the Council and for leaseholders, without loss of cover or service. The alternative would have been to simply accept the insurers considerable increase in premiums, and that would also have had to been passed on to leaseholders.*
>
> *In addition, leaseholders enjoy significant benefits under the Council insurance arrangements which are not available to the general public:-*
>
> *a. costs are substantially cheaper, due both to the economies of scale, and because the Council performs much of the administration. Costs are reduced because the Council operates at cost, where an insurance company has shareholders and profit margins to consider*
>
> *b. there are no excesses apart from the subsidence excess, and even this excess applies to the whole block, not to the individual property. I am not aware of any household policy that has no excesses."*

66. Mr Hall also said that transactions on the fund were recorded separately for lessees and tenants "*to ensure there is no cross subsidy*".

67. The relevant clause in the lease is Clause 1 of the Fourth Schedule which states:-

> **"To insure and keep insured the Block against loss or damage by fire and such other risks, as are usually covered by a comprehensive policy of insurance in the full reinstatement value thereof (including architects and Surveyors fees) in the name of the Council with the interest of the Lessee the lessees of the other flats in the Block and their mortgagees noted thereon in an insurance office of repute and whenever required produce to the Lessee a copy of or a suitable extract from the policy or policies of such insurance and written confirmation that the last premium has been paid and in the event of any part of the Block (including any common parts) being destroyed or damaged by fire or other calamity as soon as reasonably practicably lay out the insurance monies in the repair rebuilding or reinstatement of the Block".**

68. It is only the excess which has been placed in a separate fund and dealt with internally. The property is still insured in accordance with the lease terms. No evidence has been provided to substantiate Mr Sunda's contention that he is subsidising the tenants in the rented sector. The premiums are competitively tendered. The fund benefits all the tenants by way of a substantial cost saving.

69. The Tribunal determines that the insurance premiums for the years 2000 to 2005 as set out in paragraph 54 above (and the Applicant's contribution thereto) are relevant and reasonably incurred and properly chargeable to the service charge account.

Management fees

70. The management fees in dispute were the standard fees and the additional management fees in respect of the major works for the service charge years 2000 to 2006. Mr Sunda's contribution in respect of both standard and major works fees was stated, in Mr Bedloe's handwritten schedule, to be £132.54 (1999-2000), £134.20 (2000-2001), £119.96 (2001-2002), £122.74 (2002-2003), £137.05 (2003-2004) and £131.07 (2004-2005).

71. Mr Sunda's challenge in respect of the day to day management was that the cost was too high and did not represent value and, in addition, the lessees were subsidising the Council tenants.

72. Evidence was provided by Mr Ray-Mathur, the Property Accounts Manager, in respect of the day of day management and Mrs Parrette in respect of the major works management.

73. Mr Ray-Mathur said that his main duty was to deal with the financial management arrangements for the Housing Revenue Accounts and, with regard to the leasehold stock, and send out service charge demands annually on 1 October in compliance with the lease terms. He said "*my job is to make sure the leaseholders pay their bills and the tenants pay their due*". With each demand, a booklet was sent to each lessee explaining in detail how the charges were made up.

74. Mr Ray-Mathur said that the management fees were not the costs which are a direct charge to the block or estate, but the cost of providing the services. No separate accounts were kept by the Council since, with over 30,000 units, they would be prohibitively expensive.

75. The service of housing management had been put out to competitive tender. The in house service was the cheapest. He said that there was no profit in the supply of management services, unlike the private sector. In his view, there was no overlap between the cost of minor and major repairs. He accepted that there may be some duplication of work, but he said that the Council erred on the side of the lessees.

76. In respect of the major works fees, Mrs Parrette said that the services were competitively tendered and related to any scheme of works over £20,000. The fees were broken down into major works management fees, clients' fees and consultants' fees. In this particular case, of the total cost of the major works, the major works management fees were 3.20%, client fees were 2% and consultants' fees were 2.94%. Mrs Parrette advised the Tribunal of the matters which made up each type of fee, which were, inter alia, as follows:-

77. Major works management fees related to, inter alia, day to day running of the scheme, contract administration, identifying scheme of works, preparation of briefing document, appointing clerk of works to ensure health and safety issues had been complied with, resolution of tenants' concerns during contract, calculation of final account and instructing finance department to demand service charges.

78. With regard to major works management fees, Mrs Parrette said that three firms had been invited to tender. The fees ranged from 6% to 3.2%. The lowest tenderer, Housing Contract Services, was in house.

79. Client fees related to, inter alia, retaining approved list of contractors, following the procurement process in compliance with standing orders, management of Council's capital programme of works, putting scheme out to tender, dealing with the press, sending out appointment letters to contractors, completing financial and technical reference checks, sealing contract documents microfiching files and keeping microfiche records.

80. With regard to the clients' fees, Mrs Parrette said that these were not competitively tendered but 2% was deemed to be reasonable by the Council's Housing Committee after consultation with borough forums.

81. Consultants' fees related to, inter alia, management of contract, preparation of valuations, recommending payment, assessing financial value of work and making adjustments as necessary, inspecting properties prior to drafting specification, pricing the documents to enable lessees to be given a financial estimate at an early stage, attending consultation meeting, finalising specification, appraising tenders when received, direct management of managers on site, issuing variation orders, attending site meetings, passing certificate to management agents for payment, dealing with defect/liability period and agreeing final accounts with contractors.

82. With regard to consultants' fees, Mrs Parrette said that six firms had been invited to tender. Their fees ranged from 9.35% to 2.94%. External consultants, Madling & Maddison, who had provided the lowest tender, had been appointed.

83. In Mrs Parrette's view, the duties were clearly defined and there was no overlapping, although she accepted that sometimes, for example, the project controller and the administrator were required to attend meetings at the same time to discuss the same matters.

84. The cost of the major works fees were included within the cost of the major works. The cost of the standard management fees are set out in the service charge accounts as management expenses and show merely the Applicant's contribution. There is no set percentage in the lease and the Respondent is able to charge a fair and reasonable amount for standard management.

85. The Tribunal has considered the level of fees charged both for day to day maintenance and also the management of major works. Neither level is considered excessive.

86. The Tribunal determines that the Applicant's contribution to management fees for the day to day maintenance and the management fees for the major works are relevant and reasonably incurred and properly chargeable to the service charge account.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the County Courts if service charges determined as payable remain unpaid.

CHAIRMAN .....

DATE .....2nd..... **November 2006**

(jg)