

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/42UF/LSC/2005/0033



- Property** : **Cambridge House, Oxford House and Worcester House, Bumpstead Road, Haverhill, Suffolk CB9 8QE**
- Application**
- 1** For determination of liability to pay service charges for the years 2001-2002 to 2004-2005 [LTA 1985, s.27A]
 - 2** For limitation of landlord's costs [LTA 1985, s.20C]
 - 3** For the appointment of a manager [LTA 1987, S.24]
- Applicants** :
- 1 Cambridge House – Mr CJ Nicholas
 - 2 Cambridge House – English Churches Housing
 - 3 Cambridge House – English Churches Housing
 - 5 Cambridge House – Mr JR Lawrence
 - 6 Cambridge House – Mr CJ & Mrs R Plumb
 - 7 Cambridge House – Mrs MW Wright
 - 8 Cambridge House – Mr DP Lofts
 - 10 Cambridge House – Mr RJ Bartlett

 - 2 Oxford House – Mrs EL Phillips
 - 3 Oxford House – Mrs KM Stephens & Mrs W Wild
 - 4 Oxford House – Mr DJ Rawson

 - 1 Worcester House – Mrs S Sharpe
 - 5 Worcester House – English Churches Housing
 - 6 Worcester House – Mrs A Edward
 - 7 Worcester House – Mr AP Moule & Mr GD Parr
 - 8 Worcester House – Mrs K Ma
 - 9 Worcester House – Mr MS Kpaka
- Respondents** :
- Alexander Wadham-Corn (Development Company) Ltd, 101 Uphill Road, Mill Hill, London NW7 4QD

 - SPMC, 10 Marine Court, St Leonards on Sea, East Sussex TN38 0DX

 - Coppergate Insurance Services Ltd, 121 Brooker

THE DECISION OF THE TRIBUNAL

Handed down : 14th October 2005

Tribunal : G K Sinclair (chairman), J R Humphrys FRICS (valuer) & P A Tunley (lay)

Hearing date : Monday 19th September 2005, at Swynford Paddocks, Six Mile Bottom, Newmarket

Representation : Mr C J Nicholas (for the Applicants)

Despite having been served with notice of the hearing date (and in the case of SPMC having attended the pre-hearing review and confirmed only one week before the due date of its intention to prepare the hearing bundle) SPMC, Alexander Wadham-Corn (Development Company) Ltd and Coppergate Insurance Services Ltd chose neither to attend nor be represented

also in attendance : Mrs KM Stephens – 3 Oxford House
Mr Max Pendleton – GEM Estate Management Ltd, and Greenhart Estate Management Ltd (recently appointed by the landlord as its managing agent, and the lessees' proposed manager)

- Background paras 1 – 7
- The lease paras 8 – 10
- Applicable law paras 11 – 15
- Inspection, hearing & evidence paras 16 – 30
- Findings and decision paras 31 – 44
- Costs and fees paras 45 – 47

Background

1. The Ashlea estate comprises three blocks of flats built in about 1971, viz Cambridge, Oxford and Worcester Houses, and two facing rows of garages at the far end of Ashlea Road. Oxford House is half the size of the other two blocks, but the site plan appended to the lease before the tribunal demonstrates that the developer's original intention was to extend Oxford House towards the main Bumpstead Road and build a fourth block as well. That never happened, and instead the site of the intended fourth block has been sold off and developed as a row of semi-detached and terraced houses, most facing on to a short access road, Ashlea Close. The current freeholder of the estate is Alexander Wadham-Corn (Development Company) Ltd ("AWC"). There are 25 flats in all.
2. For some time the leaseholders have been dissatisfied with the standard of management

being provided by the freeholder, at the material time by its managing agents John Bray & Son, which was then taken over on 1st May 2002 and its management role continued by Seaford Property Management Company Ltd ("SPMC"), of Hastings, East Sussex.

3. At a tribunal held on 28th April 2004,¹ on an application brought by one lessee concerning the service charges levied for the years 2001–02 and 2002–03, the tribunal found that certain items claimed for, including insurance and management charges, were excessive and unreasonable. To that extent they were disallowed. In addition, due to lack of evidence that the required statutory consultation procedure had ever taken place, significant sums for external painting were disallowed to the extent that they exceeded the statutory limit of £50 per flat. Upon enquiry by other lessees, including Mr Nicholas, SPMC stated that this tribunal decision would be applied generally, and all the other lessees' service charge demands be reduced accordingly. This never happened.
4. Instead, SPMC first applied to the tribunal for dispensation from compliance with the consultation procedure under the Landlord and Tenant Act 1985, section 20ZA. Only shortly before the hearing date was it realised that the tribunal had no such jurisdiction, because of the dates involved preceding the coming into force of section 20ZA. More recently, SPMC insisted that, insofar as all the other lessees were concerned, it sought to recover the whole cost of the painting contract and would produce the evidence to demonstrate that it had, in fact, complied with the section 20 consultation procedure.
5. After further unsatisfactory correspondence about alleged difficulties with management of the estate in subsequent years Mr Nicholas eventually persuaded the freeholder to appoint as its new managing agents such person as at least one lessee from each block cared to nominate. On 22nd April 2005 Mr Max Pendleton of GEM Management Ltd was duly asked to take over from SPMC the management of the estate. Quite what authority was being passed to him was unclear – it certainly did not include arranging the buildings insurance policy – but from the wording of a letter from Alan Matthey of AWC to Mrs Stephens, dated 9th May 2005 it appears that his authority was intended to cover the whole estate, including the garages (many of which were let separately).

¹ RPTS Ref. CAM/42UF/LSC/2004/0001

6. Still dissatisfied with the freeholder's apparent disinterest in resolving existing service charge disputes Mr Nicholas duly issued these applications for a determination of liability to pay service charges and for the appointment of a manager by the tribunal, so that the lessees would by further application to the tribunal have some control over the manner in which the estate was being managed and the manager would be answerable to an independent body rather than his tenure of office being at the whim of the freeholder.
7. Mr Nicholas made clear that he sought to uphold the findings of the 2004 tribunal, so far as the relevant two service charge years were concerned, but that he expected that the demands for more recent years would be examined critically and found to be excessive.

The lease

8. Various leases appear in the documents. That accompanying Mr Nicholas' application is for flat 1 Cambridge House. It is dated 1st September 1971 and grants a term of 99 years from 25th March 1970 at the yearly rent of £10. The lessee's service charge covenants appear in clauses 2(3) & (5) and the Fourth Schedule; the lessor's in clause 4(iii). The service charge is expressed to be payable as "additional rent".
9. Amongst the services to be provided by the lessor recited in the Fourth Schedule are :
 - a. Insurance of the buildings to their full value against loss or damage by fire and the usual risks (para 1)
 - b. Maintenance and repair, etc of the structure main walls and foundations of the buildings (para 3)
 - c. Maintenance and repair of the paths drives access ways forecourts and parking areas serving the buildings (para 5)
 - d. Painting of the exterior woodwork in every fourth year of the term (para 6)
 - e. Maintenance repair and lighting of the roads pavements walkways and common amenity areas so far as the same is not carried out by the local authority (para 9)
 - f. such service or other services which the lessor may consider to be for the benefit or convenience of the lessees (para 11)..

10. At paragraph 10 of the Schedule there is also included, as a “service”, the fees of the lessor or its managing agents for the collection of rent and for general management, “together with such sum or sums from time to time as the lessor or its managing agents shall certify as desirable to be retained by the lessor as a reserve fund as a reasonable provision for prospective service charges”.

Applicable law

11. 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 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.
12. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs⁵ :
- 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.
13. Additional provision is made by paragraph 8 of the Schedule to the 1985 Act where it is alleged that the insurance is inappropriate or the premiums excessive.

² As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)

³ See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [SI 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

14. The law concerning the appointment by the tribunal of a manager can be found in sections 21 to 24A inclusive of the Landlord and Tenant Act 1987. Section 21 refers to the tenant's right to apply, section 22 to service of a preliminary notice, section 23 to the manner of application to a tribunal, and section 24 deals with the order which a tribunal can make and the circumstances in which it may do so. Section 24A deals with the jurisdiction of the tribunal.
15. No party to this application being legally qualified or represented, the very detailed provisions of section 24, as amended, are set out at length :
- (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –
 - (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver, or both, as the tribunal thinks fit.
 - (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely –
 - (a) where the tribunal is satisfied –
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) . . .
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied –
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied –
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (abb) where the tribunal is satisfied –
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied –

- (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;

or

- (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section “relevant person” means a person –

- (a) on whom a notice has been served under section 22, or
- (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable –

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to –

- (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,
- as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide –

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding –
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied–
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

Inspection, hearing & evidence

- 16. The tribunal inspected the estate on the morning of the hearing. The only party present was Mr Nicholas, who showed the tribunal around the exterior of the buildings. At the time of the inspection the weather was cool, dry and cloudy.
- 17. Worcester House was observed to be of slightly different construction to the other blocks; the type of brick being slightly yellower and more rustic, and the open staircase with wrought iron handrails leading to the upper flats being replaced at some later date by a brick and glass enclosed staircase structure jutting out from the building and

providing a degree of shelter from the weather.

18. In each block, facing the road, there are balconies projecting from full-height windows (some now double glazed) on both the first and second floors. In all cases the balconies at first floor level are of cantilevered concrete construction. In Worcester House this style is repeated for the second floor, but in the two other blocks the balconies are instead of a very unsatisfactory cantilevered timber construction. In most cases these were observed to be in very poor condition, with obvious rot and gaping holes exposing the interior to the effects of wind and driving rain. Save in one case where vertical metal railings had been installed (perhaps by the lessee), all the balcony railings are horizontal, wooden, showed no evidence of regular maintenance, and looked to be in dangerous condition, with gaps between them easily permitting a sphere 100mm in diameter to pass through.⁶
19. The vehicular approach to the three blocks is via a road running along the rear, below the old high-level railway embankment. There was some doubt as to whether this had at least in part been adopted by the local highways authority, as the condition of the road surface deteriorates markedly as one enters the forecourt to the garages at the far end.
20. The garages themselves are in very poor condition, the front doors apparently being the responsibility of the lessees and the roof that of the lessor.
21. The tribunal reconvened for the hearing at 11:25. The delay was caused by the absence of any representative of the freeholder (AWC) or its former agent (SPMC). From previous correspondence the tribunal had no expectation that Coppergate would attend. Mr Nicholas informed the tribunal that he had received a letter from Mr Frank Gibson⁷ a week ago, saying he would provide a bundle. Despite this, he had not done so.⁸ At the chairman's request the tribunal clerk telephoned AWC and spoke with a Mr Spiro, who expressed some surprise that SPMC were not in attendance but said that his company

⁶ See Building Regulations, Approved Document K, section 3, para 3.3

⁷ Mr Gibson had represented SPMC at the pre-hearing review and was therefore aware of the hearing date

⁸ SPMC had sent a letter dated 16th August 2005 to the tribunal office, making several points and attaching a bundle of documents concerning its alleged compliance with the section 20 consultation process

would abide by the tribunal's decision.

22. In support of his case Mr Nicholas supplied the tribunal with a detailed witness statement backed up by extensive documentation. Mr Pendleton also assisted with his oral account of difficulties incurred, after his appointment by AWC as its new managing agent, in trying to obtain financial information from SPMC. He stated that a record is kept of all contact made concerning a new property and produced a copy⁹ for the tribunal. Starting with an entry dated 28th April 2005, this recorded telephone calls made and received, and letters and faxes sent as recently as 16th September. This record showed that Mr Pendleton had struggled to obtain any information from SPMC and never received any balance of funds or accurate details of which lessees had paid what. On 28th July some financial information was received, from which Mr Pendleton was able to produce for the tribunal a receipts and payments schedule. He stated :

"I have recently seen an analysis of arrears, but not whether any are in dispute. I have a bundle of amounts which are due from residents, but do not know to what period they relate. We have done some guessing to see to what periods they relate."

23. However, as Mr Nicholas demonstrated by reference to payments he had made in respect of his own flat, the details were by then several months out of date. On 1st September a representative of SPMC telephoned to say that :

"...as they are losing several MCL's they are preparing a statement for them all and once that is done will send a cheque to the freeholder, who will then distribute it to the agents acting for those MCL's".

The tribunal was told that some £11,000 had apparently been paid by SPMC to AWC for this and other properties. The amount in respect of these flats was not known.

24. Mr Pendleton was able to assist the tribunal on the subject of insurance. Concerning the insurance valuation of the buildings, he referred to the previous tribunal decision but said that he would normally do an analysis. He said that he believed that a present valuation of £1.5m was a bit light, and it should be more like £1.8m today. At the last tribunal the £1.5m assessment was agreed by SPMC for that one year, but since then we have had the years 2003-04, 2004-05 and now 2005-06 – from 24th June. The last insurance cover

had been arranged by Coppergate as agent for AWC. However, Mr Pendleton went on to say that he did not know the premiums charged for each block,¹⁰ but that his companies have FSA registration so can deal with insurance, unlike SPMC.¹¹ He said that rates had softened recently and the net rate at which he can place insurance cover at present is 68p per £1,000, with terrorism a further 12p, plus a commission element, so a reasonable rate would be £1 per £1,000. With the present stated insurance value for Cambridge House being quoted by Coppergate as £672,000 and a premium of £1,411.20, this yields a rate currently charged of £2.10.

25. On the issue of SPMC's alleged compliance with the section 20 consultation procedure about the external decoration works which had been discussed and ruled upon by the 2004 tribunal, Mr Nicholas said that he could not understand how a notice from 1999 for works, the specification of which is not known, and which SPMC did not recognise as valid consultation – and even started an appeal process later in 2004, can now be said to be valid. The notice in 1999 was for some elements of different work, with different contractors, than the work actually done in 2002. In respect of the work actually done, neither Mr Nicholas nor the tribunal had seen anything beyond a few invoices from Gager & Son decorators.¹²
26. On the subject of management generally, Mr Nicholas said that the freeholder has failed. The leases are clear. Painting should be done but has not since 1993. The flat leases also stipulate that the external balconies should be attended to every 7 years, but again this has not happened since 1993 at the latest, as should have been apparent from that morning's inspection.
27. Overall, on the basis of his conversations with Mr Spiro of AWC, he believed that the freeholder recognised the problems identified by the previous tribunal about insurance valuations then being inflated, that there had been a double counting (and recovery by SPMC and AWC) of insurance premiums, and that the standard of management generally

¹⁰ Confirmed by Mr Nicholas as £672,000 for Cambridge & Worcester Houses and £336,000 for Oxford

¹¹ Although AWC as freeholder did and could lawfully recover the premiums itself

¹² Those for Cambridge and Oxford Houses did show clearly that work to the balconies had been included in the original contract, but for some reason was not done

had been so poor that it had agreed to appoint Mr Pendleton in SPMC's place as its new managing agent – but not to have responsibility for the buildings insurance. Despite all that, it had not been until the previous week that AWC had resolved part of the problem by repayment of part only of Mr Nicholas' overpaid insurance premium. This, he said, shows that the freeholder has not behaved as a landlord should, and should not continue in a managerial capacity.

28. Although his proposed manager had already been appointed as AWC's managing agent, Mr Nicholas was anxious that he be able to act with greater independence, and not at the whim of (and subject to dismissal by) the freeholder which had appointed him. As a lessee, Mr Nicholas wanted management to be subject to control by the tribunal, so that lessee concerns could be considered, and the manager would be acting in the interests of the building and its lessees and occupants, not simply those of the landlord.
29. Mr Pendleton outlined his experience in residential property management, the history of GEM Estate Management Ltd and also Greenhart Estate Management Ltd, and how it would be preferable for his company, Greenhart, to be appointed manager rather than him personally. He said that he personally does not have FSA membership, nor personal Professional Indemnity Insurance. Also, there were difficulties under money laundering rules for him to open new bank accounts in his own name.
30. He said that as a management company Greenhart charges 15%; and that it was his aim to perform above and beyond the requirements in the Blue Book.¹³ A copy of the GEM Schedule A Basis of Engagement, used by both companies, was produced. It sets out in detail the service provided and how much it costs. Mr Pendleton said that his priorities were first, to find out precisely where the lessees are financially : how much is valid and collectable. Secondly, he had to find out where the money unspent and collectable is. Next, he had to pay a series of day-to-day bills; then assess the cost of stairway refurbishment and possibly replace the balconies with Juliet balconies if that can be done. The amount of money needed to fix balconies and stairways could be substantial, so he would need to assess its affordability for lessees (some not being well off). Then the

¹³ The RICS Service Charge Residential Management Code, approved by the Secretary of State under the terms of section 87 of the Leasehold Reform, Housing & Urban Development Act 1993

state of the roads would have to be looked at. He concluded by saying that if the tribunal were to follow the findings of the 2004 tribunal then his company may be owed about £1,500 by AWC, but GEM will have no sinking fund and will need to ask for more money. Who was to be responsible for pursuing any overpayments by lessees to SPMC and/or its principal, AWC?

Findings and decision

31. The material before the tribunal comprised :
- a. The written and oral evidence and documents supplied by Mr Nicholas
 - b. The more limited documentation provided by SPMC
 - c. The oral evidence and documents supplied by Mr Pendleton, the freeholder's current managing agent
 - d. The decision of the 2004 tribunal affecting two of the service charge years in question
 - e. SPMC's application to the LVT, as the freeholder's managing agent, under section 20ZA for dispensation with the consultation requirements for the Gager external painting contract considered by the earlier tribunal.¹⁴
32. The tribunal accepts the evidence of Mr Nicholas, a meticulous witness, and that of his proposed manager, Mr Pendleton, who is not only a director of an FSA registered insurance agent but also the freeholder's current managing agent for the properties. No evidence was adduced by the freeholder, its previous managing agent, or its present insurance broker beyond some documentation showing some service charge accounts and limited supporting documentation. Insofar as the burden is upon the landlord to satisfy the tribunal that the service charges it seeks to levy have been reasonably incurred then it has failed to do so. Insofar as Mr Nicholas' and Mr Pendleton's evidence support the findings of the 2004 tribunal, and neither AWC nor SPMC have sought to challenge them, this tribunal sees no reason why it should not adopt such findings as its own in respect of the years then under consideration.
33. *Insurance* The findings of the 2004 tribunal that the realistic insurance valuation of

¹⁴ This application had to be dismissed when it was realised that the tribunal lacked jurisdiction due to the date of the contract works. No section 20(9) claim has been brought in the local County Court instead

the buildings was £1.5m is upheld so far as the two years in question are concerned. Without any direct evidence that the insurance rates charged then were not excessive for the times the tribunal also upholds the rate of £2.00 per £1,000. However, for subsequent years the tribunal accepts Mr Pendleton's evidence that the current insurance valuation should be increased to £1.8m and (which accords with the tribunal's own experience) that rates have since softened. A reasonable rate would therefore be £1.00 per £1,000 for the years ending September 2004 and 2005.

34. *Section 20 compliance* The evidence shows that on 27th May 1999 the then managing agent, John Bray & Sons, consulted the lessees about external repairs and decorations for which it had obtained tenders from B & CEE Construction Ltd (the preferred choice, at £25,270 plus VAT), RJ Thake Construction (£28,250 plus VAT), and GJ Builders (Haverhill) Ltd (£31,410 plus VAT). The work appears to have included external painting and repairs to windows and balconies, especially to those timber ones on the top floor. Nothing then happened until, in the service charge years ending September 2002 and 2003 work was done and invoiced by Gager. The tribunal notes that SPMC wrote to Mrs Edward (the 2004 tribunal applicant) on 7th September 2002, commenting on the Residents Association encouraging its members to pay their arrears so that decoration could commence, but also observing that :

“...as a number of lessees do not belong to the Residents Association, we need to give them the opportunity to object to the work being carried out without a Section 20 notice. We will be notifying them that they have seven days to formally object. We will be issuing Section 20 notices for all works over £1,000 in the future.”

35. If that is not a clear admission that there had been no proper section 20 consultation for the works carried out in 2002-03, which may have been different in nature, by an entirely separate contractor (with no evidence of any fresh tendering), then what is? Following the 2004 tribunal decision SPMC refused to apply its determination that the costs of such work were limited due to lack of consultation. It initially applied to the LVT under section 20ZA, thus acknowledging that there had been non-compliance. Due to lack of jurisdiction that application failed, whereupon SPMC rejected challenges by other lessees by stating that it had only lost at the 2004 hearing because it had failed to gather together its evidence of consultation, and that at any future tribunal it would demonstrate that

there had indeed been compliance. No such evidence has been adduced; nor has SPMC attended to argue its case.

36. The tribunal takes the view that the evidence before it shows clearly that SPMC had failed to comply with the statutory consultation procedure. One cannot consult in 1999 for work carried out 3½ –4 years later by a completely different contractor, and apparently at a different price. If consulted, would the lessees really have agreed to the deletion of essential maintenance works to the balconies to their flats?
37. Further, this tribunal considers that, by its application to the LVT under section 20ZA, SPMC (acting on behalf of its principal, AWC) is estopped from now contending that it had complied with section 20.
38. *Service charges for the years 2002 and 2003* Insofar as Mr Nicholas supports, or does not oppose, the findings of the 2004 tribunal this tribunal upholds them.
39. *Service charge for the year 2004* So far as the tribunal is aware SPMC has failed to produce anything other than an estimate of the service charge expenditure for this year. The tribunal notes that in January 2004 a specification was prepared by SPMC for works comprising the replacement of guardrails and balustrades to the existing balconies and works to the garage compound and the garages themselves, but no consultation ever seems to have taken place nor the work tendered for and undertaken. Apart from the insurance premium no evidence has been adduced of any other actual expenditure. The tribunal has already made a determination as to the reasonable level of premium and therefore that is the only sum allowed for this year.
40. *Service charge for the year 2005* At the date of the hearing this service charge year had not ended, the managing agent changed half way through, with the first agents failing to provide proper accounts or funds to the current agent, so the only determination the tribunal can make is as to the reasonableness of the insurance premium incurred during this period.¹⁵

¹⁵ For the insurance year 2005–06, commencing in June 2005

41. *Appointment of a manager* The tribunal accepts Mr Nicholas' evidence that neither AWC nor SPMC have managed these properties satisfactorily for many years. Repairs have not been undertaken to balconies and balcony guard rails, with potentially serious safety consequences. As for the balconies to the top floors of Oxford and Cambridge Houses, the tribunal is gravely concerned that rot may penetrate not only the wooden balconies themselves but also via their cantilevered structure into the floor joists of the upper stories. The failure to conduct periodic revaluations for insurance purposes, leading initially to an overvaluation and now potentially to the premises being undervalued and under-insured, and the recent double-collection of insurance premiums for the same year by Coppergate and SPMC do not instil confidence in the management.
42. The tribunal is satisfied that the grounds set out in section 24(2)(a), (ab), (ac) and (b) of the Landlord and Tenant Act 1987 are made out. For the record, it has serious concerns whether SPMC and/or AWC may also be in breach of section 42 of the Act,¹⁶ and thus satisfying the ground in section 24(2)(abb) for making an order.
43. Having satisfied itself as to Mr Pendleton's knowledge and experience (and that of his two companies) in the management of residential leasehold property the tribunal would be willing to appoint him as manager. However, taking cognisance of his regulatory and administrative concerns, the tribunal hereby appoints Greenhart Estate Management Ltd of 10 Works Road, Letchworth, Herts SG6 1LB as Receiver & Manager of the properties collectively known as the Ashlea Estate, Bumpstead Road, Haverhill, Suffolk. For the avoidance of doubt the Receiver & Manager shall exercise control of the three blocks of flats, their grounds and common parts, including the garages and garage forecourt, the road leading to them (insofar as not adopted by the highway authority) and all parking areas and paths. This control shall include control of the insurance of the properties.
44. The tribunal shares Mr Pendleton's concern about his ability to recover monies in hand from AWC, both due to lack of knowledge about who has paid and who has not, and because the Manager may lack standing to sue for their recovery. This would also put it in conflict with the freeholder from the outset. The lessees will know how much they

¹⁶ Service charge contributions to be held in a trust fund

have paid to AWC or its agents. As a result of this Decision and the Schedule attached they will be able to calculate how much they should have paid. Individually, or together, they may as a final resort sue for recovery in the appropriate County Court. The Receiver & Manager will therefore start the new service charge year with a clean sheet. In consequence, it may very quickly find itself needing to raise funds for major repair projects.

Costs and fees

45. *Section 20C* : Apart from filing a small bundle of document intended to advance its case, but not ultimately attending the hearing, SPMC has declined to participate. As it is no longer the landlord's managing agent it is in no position directly to claim to recover its costs in connection with this application under the service charge provisions in the lease. AWC, the freeholder, and Coppergate, its insurance brokers, have each declined at all to become involved in the proceedings. For the avoidance of doubt any costs which may have been incurred by the freeholder, by itself or by its agents, in connection with these proceedings are disallowed as relevant to this or any future year's service charge account because the Applicants have been entirely successful, and as a mark of the tribunal's disapproval.
46. *Costs penalties* : Although it could be said that the freeholder and its agents have acted frivolously, vexatiously or otherwise unreasonably in connection with the proceedings Mr Nicholas has acted in person, has thus incurred no professional costs, and has in any event not sought an order that the Respondents pay a contribution towards his costs.¹⁷ No order is therefore made.
47. *Reimbursement of application fees* : The lessees, through Mr Nicholas, asked SPMC to abide by a promise made that the result of the 2004 tribunal would be applied to every other lessee's service charge. Instead, it reneged on that, and sought to argue that it would and could mount a strong defence to the section 20 issue. In the event it did not. When approached by him AWC merely observed that the agent had nothing to do with them. It chose not to assist. As Mr Nicholas stated frequently throughout the hearing,

¹⁷ See CLRA 2002, Sch 12, para 10

the obligations owed to him under his lease are owed by the landlord, not the landlord's agent. It is therefore directly responsible for compliance, and for the actions of its agent. In the circumstances the tribunal directs that AWC shall reimburse the lessees' LVT application fees.¹⁸

Dated 14th October 2005

A handwritten signature in black ink, appearing to read 'G. Sinclair'.

Graham Sinclair – Chairman
for the Leasehold Valuation Tribunal

¹⁸ Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 (SI 2003/2098), reg. 9

SCHEDULE

SERVICE CHARGES ALLOWED BY THE TRIBUNAL¹⁹

Total service charge for year ended 29th September 2002

<i>Item</i>	<i>Claimed</i>	<i>Allowed</i>
Property insurance (sum insured £2,655,688) ²⁰	£5,311.34	£3,000.00
Property repairs ²¹	£13,677.01	£2,790.43
Surveyors fees	£1,044.92	£1,044.92
Gardening	£1,510.39	£1,510.39
Finance charges	£36.00	£36.00
Bank Transaction charges	£35.60	£35.60
Audit fees	£587.50	£587.50
Management fees @ £70 per flat plus VAT	£2,056.25	£2,056.25
Administration fees on external decorations @ 10% plus VAT ²²	£1,426.05	£606.82
Total :	£25,685.06	£11,667.91

Total service charge for year ended 29th September 2003

<i>Item</i>	<i>Claimed</i>	<i>Allowed</i>
Property insurance (sum insured £2,735,338) ²³	£6,034.23	£3,300.00
Property repairs ²⁴	£19,023.41	£1,700.77
Surveyors fees	£155.10	£155.10
Gardening	£1,122.00	£1,122.00
Finance charges	£36.00	£36.00
Bank Transaction charges	£45.20	£45.20

¹⁹ Items in italics were not challenged by the Applicants in these proceedings

²⁰ See 2004 tribunal decision, paras 18–25; Mr Nicholas' statement para 19

²¹ See 2004, paras 26–33; Nicholas para 20

²² See 2004, paras 42–46; Nicholas para 21

²³ See 2004 paras 47–48; Nicholas para 22

²⁴ See 2004, paras 49–56; Nicholas para 23

<i>Item</i>	<i>Claimed</i>	<i>Allowed</i>
Audit fees	£587.50	£587.50
Management fees @ £2,500 per annum plus VAT	£2,937.50	£2,937.50
Administration fees on external decorations @ 10% plus VAT ²⁵	£2,182.29	£1,464.98
Total :	£32,123.23	£11,349.05

Total service charge for year ended 29th September 2004

<i>Item</i>	<i>Claimed</i>	<i>Allowed</i>
Property insurance ²⁶	£5,359.33	£1,800.00
Provision for property repairs ²⁷	£2,000.00	£0.00
Gardening	£1,200.00	£0.00
Finance fees	£100.00	£0.00
Audit and accountancy fees	£240.00	£0.00
Management fees	£1,292.50	£0.00
Total :	£10,191.83	£1,800.00

Insurance premium determined as reasonable for service charge year ended 29th September 2005

<i>Item</i>	<i>Claimed</i>	<i>Allowed</i>
Property insurance ²⁸	£3,528.00	£1,800.00

²⁵ See 2004, paras 66–68; Nicholas para 24

²⁶ See Nicholas para 25. Figure is extrapolated from £2,143.73 charged by AWC for Cambridge House. Figure allowed is based on Pendleton's valuation of £1.8m and rate of £1.00 per £1,000 insured

²⁷ See schedule of estimated expenditure for Cambridge House. It is unclear whether these estimated sums have been apportioned between the three buildings.

²⁸ See Nicholas para 27. Figure is extrapolated from £1411.20 charged by AWC for Cambridge House. Figure allowed is based on Pendleton's valuation of £1.8m and rate of £1.00 per £1,000 insured

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/42UF/LSC/2005/0033



**Residential
Property**
TRIBUNAL SERVICE

Property : **Cambridge House, Oxford House and Worcester House,
Bumpstead Road, Haverhill, Suffolk CB9 8QE**

Application 1 For determination of liability to pay service charges for the years
2001-2002 to 2004-2005 [LTA 1985, s.27A]

2 For limitation of landlord's costs [LTA 1985, s.20C]

3 For the appointment of a manager [LTA 1987, S.24]

Applicants :

- 1 Cambridge House – Mr CJ Nicholas
- 2 Cambridge House – English Churches Housing
- 3 Cambridge House – English Churches Housing
- 5 Cambridge House – Mr JR Lawrence
- 6 Cambridge House – Mr CJ & Mrs R Plumb
- 7 Cambridge House – Mrs MW Wright
- 8 Cambridge House – Mr DP Lofts
- 10 Cambridge House – Mr RJ Bartlett

- 2 Oxford House – Mrs EL Phillips
- 3 Oxford House – Mrs KM Stephens & Mrs W Wild
- 4 Oxford House – Mr DJ Rawson

- 1 Worcester House – Mrs S Sharpe
- 5 Worcester House – English Churches Housing
- 6 Worcester House – Mrs A Edward
- 7 Worcester House – Mr AP Moule & Mr GD Parr
- 8 Worcester House – Mrs K Ma
- 9 Worcester House – Mr MS Kpaka

Respondents : Alexander Wadham-Corn (Development Company) Ltd, 101
Uphill Road, Mill Hill, London NW7 4QD

Seaford Property Management Company Ltd ("SPMC"), 10
Marine Court, St Leonards on Sea, East Sussex TN38 0DX

Coppergate Insurance Services Ltd, 121 Brooker

ORDER FOR THE APPOINTMENT OF A RECEIVER AND MANAGER

Handed down : 14th October 2005

Before the Leasehold Valuation Tribunal sitting on Monday 19th September 2005, at Swynford Paddocks, Six Mile Bottom, Newmarket

IT IS ORDERED THAT :

1. Greenhart Estate Management Limited, of 10 Works Road, Letchworth, Herts SG6 1LB, acting by its director Mr Max Pendleton or such other officer as he shall see fit ("the Manager"), be appointed as Receiver and Manager of the estate and premises known as Cambridge House, Oxford House and Worcester House, (otherwise as the Ashlea estate), Bumpstead Road, Haverhill, Suffolk (Title No SK11071) ("the property") with effect from 30th September 2005, namely the start of the service charge year 2005–06.
2. The Manager shall manage the property in accordance with :
 - a. The respective obligations of the lessor and the lessees under the various leases by which the flats at the property are demised ("the leases") and in particular, but without prejudice to the generality of the above, with regard to the repair, redecoration, and provision of services to and insurance of the property; and
 - b. The GEM Property Management Service Guide and its "Schedule A" Basis of Engagement; and
 - c. With due regard to the duties of a manager as set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing & Urban Development Act 1993.
3. The Manager shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the leases
4. The Manager shall :
 - a. Account to the freeholder for the time being of the property for the payments of ground rent received by it; and
 - b. Apply the remaining amounts received by it (other than those representing its fees specified in this Order) in the performance of the lessor's covenants contained in the leases.
5. The Manager shall make arrangements with the present insurer of the buildings to make any payments due under, and amend the name of the insured in, the insurance policy presently effected by AWC or its agent; or at its discretion shall arrange for alternative adequate insurance cover for a sum insured of not less than £1,800,000 to be taken out in its name as Manager and Receiver of the property with a reputable insurer in respect of the risks specified in the leases and such other normal or ordinary risks as in its discretion the Manager considers fit, ensuring that the names of all the leaseholders and their mortgagees are noted thereon.

6. The Manager shall be entitled to be remunerated in accordance with the provisions in respect of management fees set out in Schedule A, which for the avoidance of doubt shall be recoverable as part of the service charge as defined in paragraph 10 of the Fourth Schedule to the leases.
7. As stated in Schedule A, the remuneration mentioned above shall be subject to payment of Value Added Tax.
8. This Order shall remain in force until 29th September 2008 unless varied, extended or revoked by further Order of the Tribunal and the Manager and every lessee shall have liberty to apply to the Tribunal for further directions.

Dated 14th October 2005



.....
Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal