Residential
Property
TRIBUNAL SERVICE

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

Reference number:	LON/OOBJ/LAC/2005/007
Property:	201 Felsham Road, London SW15 1BD
Applicants:	Ms M Haines & Mr A Smith (Tenants)
Respondent:	Mr D Lewis (Landlord)
Appearances:	Both parties appeared in person
Tribunal Members:	Mr A Andrew LLb Mr M L Jacobs FRICS Mrs L Walter MA(Hons)
Application Dated:	19 December 2005
Directions:	25 January 2006
Hearing:	27 February 2006
Decision:	30 March 2006

DECISION

1. We determined that the following administration charges would be payable by the Applicant to the Respondents for the latter's consideration of their application for consent to the proposed loft conversion:-

   a) Surveyor's costs not to exceed £1,000 plus VAT and any disbursements properly incurred; and
   b) Legal costs not to exceed £500 plus VAT and any disbursements properly incurred; and
   c) The Respondents' administration costs of £250 plus VAT;

   The above charges would be payable upon production of the appropriate receipted invoices although the Respondent would be entitled to require security for payment of those charges prior to a formal consideration of the Application.

THE FACTS

2. On the basis of the documents produced to us and the submissions made at the hearing we found the following relevant facts:-

   a) 201 and 203 Felsham Road, London SW15 has the appearance of a terraced house but actually consists of two maisonettes each with its own entrance to the road. Both maisonettes have been sold under long residential leases which we understood to be in substantially the same form.

   b) The Applicants are the lessees of the upper maisonette. The original lease of the upper maisonette was dated 25 October 1975 and was for a term of 99 years from 25 December 1974 ("the Lease"). The term was extended to 150 years from 25 March 1996 by a deed of variation dated 25 March 1996. That deed operates as a surrender and re-grant and hence the Applicants now hold the Property under that deed but otherwise on the same terms as the Lease (subject to a variation in the extent of the demise that is not relevant to this decision).

   c) The Applicants propose to convert the loft to provide an extension to their residential accommodation. Indicative plans and an outline specification prepared by a specialist loft conversion company, Absolute Lofts, were produced to us. The proposed loft conversion is substantial and if completed will extend into the air space above the existing roof. It is planned to form a mansard roof extension to the existing pitched roofs of both the rear of the main building and the rear extension with the roof finish level with the existing ridge.

   d) The Applicants applied to the Respondent, as landlord, for consent to undertake the proposed loft conversion. The Respondent said that he would only grant consent to the proposed conversion if the Applicants

made a payment equal to 1/3rd of the difference between the increased value of the Property (resulting from the conversion) and the cost of the conversion. The Applicants estimate that payment at £15,000 although it has not been quantified by the Respondent.

e) Believing the sum demanded to be an administration charge within the meaning of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") the Applicants applied for a determination of their liability to pay it.

RELEVANT CONTRACTUAL AND STATUTORY PROVISIONS

3. Clause 1 of the lease includes a description of the Property, the relevant provisions of which read as follows:-

"ALL THAT the Upper Maisonette known as 2001 Felsham Road, London SW15, forming part of the building(hereinafter called "the Building") known as 201/203 Felsham Road aforesaid together with the yard at the rear thereto and the boundary walls and fences appurtenant thereto which premises are for the purposes of identification only shown edged red on the plan annexed hereto including the structure of the Building from a level half way between the ceilings of the lower maisonette and the floors of the demised premises up to and including the roof of the Building together with ..."

4. In sub-clause 2(viii) of the lease, the lessee covenants in the following terms:-

"Not to make any structural alterations or structural additions to the demised premises or remove any of the Landlord's fixtures without the previous consent in writing of the Lessor (such consent not be unreasonably withheld)".

5. An administration charge is defined in sub-paragraph 1(1) of Part 1 of Schedule 11 of the 2002 Act. The relevant provisions read as follows:-

"In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-

a) For or in connection with the grant of approvals under his lease, or applications for such approvals...".

6. Sub-paragraph 1(3) defines a variable administration charge as *"an administration charge payable by a tenant which is neither-*

a) specified in his lease, nor

b) calculated in accordance with a formula specified in his lease".

7. Paragraph 2 provides that: *"A variable administration charge is payable only to the extent that the amount of the charge is reasonable".*

8. Sub-paragraph 5(1) provides that: *"An Application may be made to a Leasehold Valuation Tribunal for a determination whether an administration charge is payable and, if it is, as to-*
    a) the person by whom it is payable,
    b) the person to whom it is payable,
    c) the amount which is payable,
    d) the date at or by which it is payable, and
    e) the manner in which it is payable

REASONS FOR OUR DECISION

9. The Applicants considered that the sum demanded amounted to an administration charge and that it was unreasonable. They suggested that the Respondent could only recover his reasonable costs incurred in dealing with their application for consent to the proposed alterations which they suggested should be in the region of £1,000.00 plus VAT although they provided no evidence to substantiate that figure.

10. The Respondent considered that the sum demanded did not amount to an administration charge and although he did not quite put it in these terms he suggested that we had no jurisdiction to deal with the Application. He said that because the proposed loft conversion would extend beyond the "envelope" of the demised property it would amount to a trespass. Thus the air space above the roof would have to be incorporated in the demise and that could only be achieved by a surrender of the existing lease and the grant of a new lease of the extended property. He considered that he was perfectly entitled to charge a premium for the grant of a new lease and such a premium was not within the contemplation of Schedule 11 of the 2002 Act. As an experienced property owner, with a substantial portfolio of properties, he had always dealt with similar applications in that way.

11. After we had drawn the parties' attention to the case referred to below we asked the Respondent what he considered to be a reasonable charge for considering the application for consent to the proposed alterations. In reply he said that there were no circumstances under which he would grant consent and that consequently the payment of a charge would not arise.

12. The Applicants said that they did not seek reimbursement of their application fees and neither did they seek an order under Section 20c of the Landlord and Tenant Act 1985 limiting the recovery by the Respondent of his costs incurred in these proceedings, through any relevant provisions of the Lease.

13. We drew the parties' attention to the Court of Appeal decision in Davies – v- Yadegar [(1990) 09 EG 67] from which it is apparent that if, as in this case, the roof forms part of the demise of an upper flat then the air space above the roof is included in the demise. Thus the Respondent's analysis of the situation was incorrect. Consequently the proposed loft conversion

amounted to a structural alteration or structural addition and the Applicants' application for consent fell to be considered under sub-clause 2(viii) of the Lease, which provides that the landlord cannot unreasonably withhold consent. Although there is no express provision in the Lease which requires the tenant to pay the landlord's reasonable costs in the granting of such consent it would nevertheless be reasonable for the Respondent, as a condition of granting consent, to require the Applicant to pay those costs.

14. The definition of an administration charge is extremely wide. It covers both direct and indirect payments. Consequently it encompasses payments reasonably demanded as a condition of granting consent where such consent cannot be unreasonably withheld. Thus the sum demanded by the Respondent, as a condition for granting consent, fell to be considered as an administration charge.

15. Equally it was clear that the sum being demanded amounted to a variable administration charge because it was neither specified in the lease nor was it calculated by reference to a formula specified in the lease. Consequently the sum being demanded was only payable to the extent that it was reasonable. Although the 2002 Act offers no practical guidance, on applying the test of reasonableness, we considered that administration charges would only be reasonable to the extent that they reimbursed the landlord with its costs reasonably and properly incurred in considering a tenant's application and, where appropriate, in granting the relevant consent or approval.

16. However in this case the real issue between the parties was not the reasonableness of the sum being demanded but the Respondent's refusal to grant consent. That was not an issue within our jurisdiction but was a matter for the County Court. If the Respondent persisted in refusing to entertain the application then the Applicants would have to choose between abandoning the project, accepting the substantial risk inherent in proceeding without consent or applying to the County Court for declaratory relief. It was not a decision that should be made without the benefit of specialist legal advice.

17. Nevertheless the Applicants requested us to consider what would be a reasonable administration charge on the assumption either that the Respondent re-considered his position or that declaratory relief was granted by the County Court. That was an issue within our jurisdiction as a specialist tribunal. We considered it appropriate to make a determination to avoid the substantial delay and additional costs that would result from a future Application in the event of consent being granted subject to payment of an administration charge which could not be agreed in between the parties.

18. We considered that the Applicants had underestimated the costs that would reasonably be incurred by a landlord, such as the Respondent, in considering an application for consent to undertake substantial alterations

of the type under consideration. The Respondent, as the owner of a property portfolio, would incur in-house costs in dealing with the Application. In addition, if acting prudently, he would instruct both surveyors and solicitors to represent him.

19. So far as the Respondent's in-house costs were concerned we considered that £250 plus VAT (if applicable) would be a reasonable sum to cover the overhead cost of considering the Application and communicating with his surveyors and solicitors.

20. The Respondent's surveyors would have to consider the plans and specifications and if they did not have appropriate in-house expertise they would have to obtain the advice of a structural engineer. They would also wish to inspect the Property as the work progressed to ensure that it was carried out in accordance with the plans and specifications. Allowing a reasonable degree of tolerance to the Respondent we considered that a reasonable fee for such work would not exceed £1,000 plus VAT together with any actual disbursements properly incurred (but not including usual office overheads such as stationary, postage and copying etc).

21. The Respondent's solicitors would have to obtain instructions, prepare and negotiate a licence to alter and correspond with the Applicants or their solicitors. Generally such licences were prepared from standard precedents and again allowing a degree of tolerance to the Respondent a fee not exceeding £500 plus VAT and disbursements would represent a reasonable fee for that work.

22. The above sums would be payable upon production of appropriate receipted invoices although the Respondent would be entitled to require reasonable security for payment of those charges prior to formal consideration of the Application.

Chairman:.....(A J Andrew)

Dated: 30 March 2006