

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

EASTERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

Re 6 Worcester House, Bumpstead Road, Haverhill

**Application under section 27A of the Landlord & Tenant
Act 1985**

Hearing on 28th April 2004

Case Number: CAM/42UF/LS2/2004/0001

Present

Mrs. A. Edward (Applicant) and Mr Terry Edward

Mr. D. Harrod-Edwards, Director of SPMC (Agents for the Respondent, Alexander
Wadham-Corn (Development Co) Ltd.)

Mr. F. Gibson, SPMC Surveyor

Tribunal Members

D.S.Brown FRICS MCI Arb (Chair)

Mrs. J. H. Lancaster, Barrister at Law

J.M.Power MSc FRICS FCI Arb

The Application

1. The Application, dated 3rd January 2004, is for the Tribunal to consider service charges for the years 2002 and 2003 and the Section 20 Notice in respect of proposed works to the balconies and garages.

The Inspection

2. The Tribunal Members inspected the property, in the company of the parties listed above.
3. The development consists of three 3-storey blocks of flats, built in 1971. They are of brick and tiled construction, with areas of weatherboarding to some elevations. Some of the balconies are constructed of concrete and some are timber.

4. The Tribunal noted that paintwork to the balcony rails is generally poor and there is evidence of rot in some woodwork to balconies. One balcony has metal railings.

The Lease

5. The lease is dated 29th April 1971 and creates a term of 99 years from 25th March 1970.
6. The Lessee covenants to pay *“a fair and proper proportion of all sums expended or liabilities incurred by the Lessor in respect of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto such proportion to be calculated in the ratio which the net rateable value of the Demised Premises as fixed by the Local Authority shall bear to the aggregate net rateable value of the Buildings as similarly so fixed”*.
7. The Fourth Schedule lists services to be provided by the Lessor, including:-
 8. *1. To insure the Buildings and at all times during the said term to keep the same insured to the full value thereof against loss or damage by fire and aircraft and such other risks as are covered by the usual Comprehensive Insurance Policy.....*
 9. *3. To maintain and keep in good repair and condition and whenever necessary to renew the structure main walls and foundations of the Buildings and the roof gutters and rainwater pipes thereof and the common entrance halls passages landings and staircases leading to the Buildings.*
 10. *6. In every fourth year of the term and in the last year thereof to paint the exterior of the Buildings usually painted with two coats of good paint and clean and repaint the exterior stone and brickwork thereof when necessary.*
 11. *7. In every seventh year of the term and in the last year thereof to stop up replaster paper varnish and paint with at least two coats of good paint and generally decorate and make good the common entrance entrance halls passages landings and staircases and all other internal parts of the Buildings used in common by the occupiers of the various flats therein and generally so treated.*
 12. *10. The fees of the Lessor or its Managing Agents for the collection of rents of the Buildings and for the general management thereof 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 reasonable provision for prospective service charges.*
 13. *11. Such service or other services which the Lessor may consider to be for the benefit or convenience of the Lessees.*

THE EVIDENCE AND DECISIONS

14. This Decision and Statement of Reasons will summarise the principal points raised, it is not intended to be a verbatim report or full summary of all of the evidence presented. The Tribunal considered all of the evidence, written and oral, in reaching its decisions.

Preliminaries

15. The Chair sought clarification about the copy leases which had been provided, as they did not refer to "Flat 6". Mrs. Edward explained that her flat is referred to as "Flat 11" in her lease because that was the original numbering in the development.
16. The parties confirmed that there are 25 flats in total. Mrs. Edward stated that she accepts as correct the apportionment of the service charge between the flats as set out in the Statement of Maintenance Due for the Year Ended 29th September 2003, which has been copied to the Tribunal. The apportionment to 6 Worcester House is 5.29%.
17. Mrs. Edward confirmed that the service charge elements which she wishes the Tribunal to consider for 2002 and 2003 are Property Insurance, Repairs and Finance & Management. Finance and Management included Finance Charges, Bank Transaction Charges, Audit Fees, Management Fees and Administration Fees.

The Year Ended 29th September 2002

Property Insurance - £5311.34

18. Mrs. Edward stated in her written representations that there was no evidence of any attempt by the Lessor to get cheaper insurance. The only reference that she had seen to an insurance premium was in a 1999 account.
19. She stated in evidence that she felt that the sum insured was excessive. She had an informal calculation done of Worcester House. It is about 800 sq.m. and the rebuilding cost would be approximately £700 per sq.m. giving a rebuilding cost for that building of £560,000. She thought that Cambridge House was the same size and Oxford House was half the size, so a total insurance figure should be £1,400,000. The total sum actually insured is shown as £2,655,668. She was not able to produce any written calculation of her figure or evidence to support it.
20. Mr. Harrod-Edwards had no premium receipts to hand but was able to produce faxed copies after lunch, which confirmed the premium amount as £5311.34 in respect of the three blocks. He said that his company do a re-instatement calculation every three years and use the BCIS Tables. He could not say when the last calculation was done because SPMC only took over the management in May 2002. They had not yet done one.

21. Mrs. Edward also challenged the level of the premium. She said she had obtained a formal quote 20% lower than this for the same amount of cover, with Deacon Insurance. She was not able to produce any evidence of this nor give any details of the terms of the policy.
22. Mr. Harrod-Edwards said that the insurance had been effected through Chase Longman, Corporate Insurance Management and Scheme Administrators. He produced a letter from them to SPMC confirming that insurance was selected after market research and was competitive in terms of both price and the breadth of cover provided.
23. **The Tribunal concludes that the insurance cover was reasonably obtained in the market place in the normal way of business and that the level of premium, at approximately £2 per £1000, is reasonable.**
24. **From its experience, the Tribunal considered that the level of cover appeared to be high. In the absence of any supporting evidence from the Respondent, the Tribunal informed the parties that it would take dimensions of the buildings and make an appraisal of the insurance cover. The parties agreed to this procedure. From the dimensions taken on site, the Tribunal calculated the gross external floor area of the buildings to be 2081sq.m. By reference to the RICS BCIS Guide to Rebuilding Costs of Flats, the Tribunal, using the knowledge and experience of its members, calculated that the reasonable rebuilding cost for insurance purposes would not exceed £1,525,000. This information was relayed to the parties, who were given an opportunity to make representations. SPMC has responded that calculations by their surveyor since 28 April support the view of the Tribunal with a reinstatement value of £1,247,630, with allowance for contingencies taking the figure to £1,500,000. They say that the reinstatement costs for 2002 and 2003 were derived using the previous year's valuation as the base figure and applying uplift factors. No representations were received from Mrs. Edward.**
25. **In the light of its own calculations and the information from SPMC the Tribunal concludes that a reasonable figure for insurance cover would have been £1,500,000. This would give a premium of £3000, which is the figure that the Tribunal considers to be reasonable and payable under this heading.**

Property Repairs - £13,677.01

26. Mr. Harrod-Edwards said that this was made up of –

MSM Advice on remedial work to balconies	£ 170.38
Metcraft Fabricating and fitting balcony balustrade	£1,017.55
Bailey Guttering work	£ 352.50

Gager & Son	External Decorations to Worcester House	£5,086.58
	-ditto -	£7,050.00

27. Mrs. Edward said that she was only challenging the two decoration bills of Gager. She said that they had received no Section 20 notification or consultation about this work. The first she knew of it was a note through her door saying that work was going to start in three or four day's time.
28. She said that there had been a s.20 Notice in 1999 for external decorations, balcony repairs, replacement windows and other works. It had three quotes attached and she thought that one was about £31,000. She could not remember the details and had not got a copy. She did recall that Gager & Son were not one of the companies who quoted then.
29. She said that the exterior had not been decorated for about twelve years and she appreciated that there would have had to have been a lot of filler used. Some of the windows were so rotten they could not be touched. She said they painted the weatherboard cladding, the communal areas and stairwells but not the balcony rails. It took one man, sometimes two, three weeks to complete.
30. Mr. Harrod-Edwards could not give the Tribunal any information about s.20 Notices for this work nor provide any copies or evidence of such notices as his company was not managing at the time. He said that initially SPMC concentrated on clearing up a number of financial issues. When SPMC took over, there were estimates from Gager and Son who said that they would stick by them. He no longer has copies of them as he did not have complete maintenance files from that period.
31. **The total cost of £12,136 for external decorations to this building seems, on the face of it, to be high. However, the Tribunal has no information as to the specification or exactly what work had to be done. Undoubtedly, after such a long period without redecoration, there would have been some filling, priming and undercoating to do and some making good of rotted timber. There would also be the cost of scaffolding. On the evidence before it, the Tribunal has no basis to find that the amount of the charge is unreasonable.**
32. **With regard to the relevant requirements under s.20, the Tribunal finds that, on the balance of probabilities, these were not complied with and they had not been dispensed with by the court. Accordingly, the amount which can be recovered through the service charge in respect of this work is limited, under s.20(3) to £50 per flat , namely £1250.**
33. **The amount payable under this heading, "Property Repairs", is therefore £2790.43.**

Finance Charges - £36

34. Mr. Harrod-Edwards said that this was a £3 per month charge by NatWest for keeping the account open and having monthly statements. He said that it must be borne in mind that the current account was overdrawn for some time because of the refusal of some tenants to pay their service charges. The charge is shown on the audited accounts. In response to a question from the Chair he said that he considered that the bank charges were covered by paragraph 11 of the Fourth Schedule.
35. Mrs. Edward had no observation to make.
- 36. The Tribunal finds that this charge had to be incurred in order to keep the current account open and obtain monthly statements and that this was for the benefit and convenience of the lessees and that the charge is reasonable and payable.**

Bank Transaction Charges - £35.60

37. Mr. Harrod-Edwards said that these were cheque charges and the explanation for them was the same.
38. Mrs. Edwards had no observation to make.
- 39. For the reasons stated in the previous section, the Tribunal finds that this charge is reasonable and payable.**

Audit Fees - £587.50

40. Mrs. Edwards said she was not challenging this charge.

Management Fees - £2,056.25

41. Mr. Harrod-Edwards said that this charge was computed as £70 per flat plus VAT. Mrs. Edward said she did not challenge this charge.

Administration Fees on External Decorations 10% plus VAT - £1,426.05

42. Mrs. Edward said that she calculated 10% of the cost of the decorations to be £1350.66.
43. Mr. Harrod-Edwards said that it was based on the sum of all external works. The Landlord served notices, did the demands for payment and collected the money. It also covered funding the works because there was no money in the service charge current account. The lease does not provide for interest on outstanding amounts so no interest was charged to lessees on late payments.
44. He accepted that some work in respect of arranging and supervising works was carried out by Michael Sale, whose accounts for that work were charged to the service charge account as Surveyors Fees.

45. The heading on the service charge statement refers to “External Decorations”. The Tribunal does not accept that it is reasonable for the Agents to charge 10% on minor works, such as those by MSM, Metcraft and Bailey. It is common practice for Managing Agents to charge a percentage of major works costs but such a charge, to be reasonable, must reflect the amount of work put in by them. In this case, the s.20 procedures were not followed, no competitive quotations were obtained, some of the management and supervision of the work was by Michael Sale and the remaining supervision and administration on a straightforward single decorating contract would have been minimal.
46. The Tribunal considers that a reasonable administration charge would be 5% of the contract cost net of VAT (£10,329), amounting to £516.45, plus VAT, a total of £606.82.

Year Ended 29th September 2003

Property Insurance - £6,034.20

47. Mrs. Edward’s challenge and Mr. Harrod-Edwards’ response were as for 2002.
48. On the same basis as that set out in paragraph 24, the Tribunal considers that the reasonable rebuilding cost for insurance purposes was £1,500,000. It considers that the insurance cover was reasonably obtained in the market place in the normal way of business and that the level of premium, at approximately £2.20 per £1000, is reasonable. Accordingly, the Tribunal finds that a charge of £3,300 under this heading would be reasonable and is payable.

Property Repairs - £19,023.41

49. Mr. Harrod-Edwards said that these comprised –

B&C	Glazing repair	£ 104.02
MSM	Balcony details	£ 246.75
Gager & Son	External Decorations Oxford House	£ 8,385.39
Gager & Son	External decorations Cambridge House	£10,187.25
Insurance excess on No10 Cambridge House		£ 100.00

50. Mrs. Edward restricted her challenge to the decoration charges again, having clarified that the insurance excess was not in respect of the B&C charge.
51. Mr. Harrod-Edwards said that the company had not been able to obtain the early payment discount on Cambridge House due to the shortage of funds in the current account.

52. With regard to s.20 procedures, Mrs. Edward said that by this time the Residents' Association was desperate to get the work done and asked SPMC to get on with it. Mr. Harrod-Edwards said that Mr. Gager held his price over from his previous quote. It was not until September when the financial queries had been resolved and Lessees had made payments into the service charge account that SPMC felt able to give instructions for this work. By then they knew that they did not have time to go through the s.20 procedures and get the work done that year. Their surveyor felt that it was urgent because of the continuing deterioration. He said that they did confer with every lessee in writing and the answer from the Residents' Association was to get on with it.
53. Mrs. Edward did want to query the small differential between the charge for Cambridge House (£8670 net) and Oxford House (£7136.50 net) as the latter was only half as big. Also, why was Worcester House more than Cambridge House as both were of similar size and the works to each were the same? Mr. Harrod-Edwards could not account for the differentials.
54. **The Tribunal accepts Mrs. Edward's point about the differential between Cambridge House and Oxford House. The latter is identical in design to the former but half the size. There is no visible explanation as to why the charge for Oxford House is significantly more than half of the charge for Cambridge House. There may have been some extra preparatory work on Oxford House and the scaffolding charge would not necessarily have been calculated pro rata. The invoices from Gager & Son show differing adjustments to the "Total Price", which is presumably the original quoted price. In the light of the evidence before it, and in the absence of a specification, explanation or competitive quotations, the Tribunal concludes that the "total price" on Oxford House at £7,736.50 is not reasonable and that a reasonable figure would be not more than 60% of the "total price" on Cambridge House, namely £6078, with the £600 deduction shown on the invoice, that would give a reasonable charge of £5478 plus VAT for Oxford House, namely 6,436.65, plus £10, 187.25 for Cambridge House, a total of £16,623.90**
55. However, that is not the amount payable. The Tribunal has some sympathy with SPMC regarding the s.20 procedures because it had been asked by the Residents' Association to proceed with the work. However, the parties cannot contract out of the s.20 requirements. The facts given to the Tribunal in evidence may constitute grounds for an application to dispense with the consultation requirements but no such application has been made. Therefore, for the reasons given under the previous year, at this stage, the amount which can be charged to the service charge account for this work is limited to £1,250. This is a single charge because, although there were two invoices, the contract was awarded and executed as a single contract

56. The total charge payable under this heading, "Property Repairs", is therefore £1,700.77.

Finance Charges - £36

57. The explanation was as per 2002. Mrs. Edward made no comment.

58. For the reasons given under 2002, the Tribunal finds that this charge is reasonable.

Bank Transaction Charges - £45.20

59. The explanation was as for 2002.

60. Mrs. Edward said that this ought to be part of the management charge.

61. For the reasons given under 2002, the Tribunal finds that this charge is reasonable.

Audit Fees - £587.50

62. On production of the receipt, Mrs. Edward did not challenge this amount.

Management Fees - £2,937.50

63. Mr. Harrod-Edwards said that SPMC held their charges to £70 per flat for the first year and then increased them to £100 per flat. Their normal fee is currently £110 per flat.

64. Mrs. Edward commented that the charge just went up with no prior notice.

65. From its experience, the Tribunal considers that £100 per flat is a reasonable fee rate and finds that this charge is reasonable.

Administration Fees on External Decoration @ 10% plus VAT - £2,182.29

66. Mr. Harrod-Edwards said that SPMC use their own surveyors. This charge was based on the total of the Gager accounts.

67. Mrs. Edward said that managers usually make such a charge on the net amount.

68. The Tribunal has decided that a reasonable charge for the decorations to Cambridge House and Oxford House, net of VAT would be £16,623.90. It does not consider that a 10% charge is justified, bearing in mind that no specification was drawn up, no competitive quotations were obtained, no s.20 procedures followed and this was a straightforward contract which would require little supervision. The

Tribunal considers that 7½ % would be reasonable, namely £1246.79 plus VAT, a total of £1,464.98.

Year Ending 29th September 2004

69. SPMC have served a notice of intention on 30/01/04 to carry out works described as “replacement of guardrails to balconies, overhaul of garages and garage compound surfacing plus items of maintenance”. This notice was in the correct form.
70. It followed this with a notice dated 2/3/04 giving details of two estimates for the works. This notice did not give details of hours and place at which the quotations could be inspected but it stated that “copies are available if requested”.
71. This latter notice does not comply with Regulation 11(10) of Part 2 of The Service Charges (Consultation Requirements)(England) Regulations 2003, which requires the notice to invite lessees to make observations about the quotations within a specified period. The notice contains no such invitation.
72. Mrs. Edward complained that the company had served one notice in respect of works to the flats and the garages, yet they were let on separate leases and had separate service charge accounts, which Mr. Harrod-Edwards confirmed. Furthermore, there is one figure quoted by each contractor for all the work and so lessees have no way of calculating what their likely liability will be.
73. Mr. Gibson said that this was done for expediency, to avoid having to send separate s.20 notices for each service charge account. He said if they did the latter, they stood to be criticised for causing unnecessary expense and if they did not they get accused of “ducking under the s.20 procedure”.
74. Mrs. Edward said that the provisions in the first notice to inspect the specification at St. Leonards on Sea, in Essex, were not reasonable. Mr. Harrod-Edwards pointed out that she had requested a copy on 6th January and had been sent one on 9th January. Two other lessees had also been sent copies on request.
75. Mrs. Edward then queried why she should have to pay a share of the cost of balcony repairs as she had no balcony. She pays a larger proportion than her neighbour who has two balconies. It is not fair. Mr. Harrod-Edwards said that the charges must be made in accordance with the lease.
76. **The Tribunal finds that the procedure followed in respect of these notices does not comply with the Regulations.**
77. **Firstly, the time and place given in the first notice for inspection of the specifications is not reasonable, given the distance between Haverhill**

and St. Leonards on Sea. That notice did not state that copies are available upon request.

- 78. Secondly, a separate notice should have been served in respect of each service charge account. It defeats the purpose of the consultation regulations if the recipients of the notice have no way of knowing what charges will accrue to their own service charge account and if they have no way of subsequently checking any charge to their account against the original quotation.**
- 79. Accordingly, the Tribunal finds that if the costs set out in the notice of intention dated 30/01/01 were incurred, the amount of service charge payable by any tenant in respect of those works would be limited to the maximum specified in Para. 6 of the Regulations, namely £250**

ORDER

Made under the provisions of Section 27A of the Landlord & Tenant Act 1985

**Upon hearing the Applicant in person and Mr. Harrod-Edwards and Mr. Gibson
for the Respondent –**

**It is declared that the following service charges are payable forthwith by Mrs.
Edward to SPMC, as agents for Alexander Wadham-Corn (Development Co)
Ltd, namely:-**

For the service charge year ended 29th September 2002:

**Property Insurance £3,000
Property Repairs £147.61
Finance Charges £1.90
Bank Transaction Charges £1.88
Audit Fees £31.08
Management Fees £108.77
Administration Fees on External Decorations £32.10**

For the service charge year ended 29th September 2003:

**Property Insurance £3,300
Property Repairs £89.97
Finance Charges £1.90
Bank Transaction Charges £ 2.39
Audit Fees £31.08
Management Fees £155.39
Administration Fees on External Decorations £77.50**

**AND that as the notices served on 30th January 2004 and 2nd March 2004,
relating to proposed works to balconies, garages, garage compound plus items of
maintenance, do not comply with the Service Charges (Consultation
Requirements)(England) Regulations 2003, the maximum amount of service
charge that would be payable by any tenant in respect of those works would be
£250.**

Dated this 14th day of June 2004

Signed:



D.S.Brown FRICS MCIArb