IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UE/LSC/2006/0083
CHI/29UE/LSC/2006/0090

IN THE MATTER OF 31 QUEBEC TERRACE, 20 CALGARY TERRACE & 4 EDMONTON HOUSE, WINNIPEG CLOSE, DOVER, KENT

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

BETWEEN:

(1) MR J SMITH (31 QUEBEC TERRACE)
(2) MR R BARNES (20 CALGARY TERRACE)
(3) MRS E FAKEHINDE (4 EDMONTON TERRACE)

Applicants

-and-

DOVER DISTRICT COUNCIL

Respondent

THE TRIBUNAL'S DECISION

Background

1. These are applications made jointly by the Applicants pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of estimated service charges in the 2006/2007 service charge year. No issue arises as to the Applicants liability to pay the disputed service charges.

2. At a pre-trial review on 16 October 2006, the following service charges were identified as being challenged by the Applicants:

(a) external redecorations.

(b) grounds maintenance.

(c) external lighting.

(d) replacement of some doors to individual flats.

The challenge made by each of the Applicants is the same in relation to these issues. Each of these is considered in turn below.

3. The Applicants occupy their respective premises by virtue of leases variously granted to them by the Respondent for a term of 123 years ("the leases"). The Tribunal was provided with a draft lease relating to 31 Quebec Terrace. It was common ground between the parties that the Applicants liability to pay the service charge arises in the following way.

4. By clause 4(iii) of the leases, the lessees covenanted, *inter alia*, with the lessor to contribute an amount equal to the total expenditure incurred by the lessor under the Fourth Schedule multiplied by 0.066666667 (or approximately $1/15^{th}$). The lessees also covenanted to pay a contribution of $1/130^{th}$ part of the expenditure incurred by the lessor under the Fifth Schedule. It is not necessary to set out the provisions of the Fourth and Fifth Schedules of the leases because, again, it is common ground that the estimated service charges claimed by the Respondent fall with either schedule. Clause 4 (iii) also provides that estimated service charge contributions for the forthcoming service charge year shall be prepared by the lessor on 1 April of each year.

Those contributions shall be paid by the lessees by four equal instalments on 1 May, 1 August, 1 November and 1 February of each year. As soon as possible after 31 March of each year, the lessor is required to reconcile the actual service charge expenditure against those estimated sums already paid by the lessees in advance.

Inspection

5. The Tribunal externally inspected various areas of the Canadian Estate on 11 December 2006. The site comprises several blocks which intermingle and is thought to have been constructed by the Local Authority for Council Housing and was probably built about 50 years ago. Most buildings are on two or three floors and are constructed with brick elevations under tiled roofs. The site is on steeply sloping ground, which creates a difficulty in assessing the full layout of the scheme.

Hearing

6. The hearing in this matter also took place on 11 December 2006. The Applicants, save for Mrs Fakehinde, appeared in person. The Respondent was represented by Mr Ashby, a Property Services Manager, and Mr Matthews, a Housing Services Manager.

(a) Grounds Maintenance

7. The Applicants made two complaints about the cutting of the grass on the estate generally. Firstly, that the cutting of the grass historically had been unsatisfactory by the contractor, English Landscapes. Nevertheless, the same

contractor had been appointed by the Respondent under a long-term qualifying agreement. Secondly, the Applicants stated that they should be consulted in relation to this agreement and were not.

8. In reply, it was said on behalf of the Respondent that because the service charge contributions payable by the leaseholders was below the £100 statutory threshold, there was no obligation of the Respondent to formally consult any of them in relation to this contract. It was accepted that historically there had an issue about the standard and quality of the grass cutting carried out by English Landscapes. However, monitoring would now be done by the Respondent's Horticultural Team. Neither Mr. Ashby nor Mr. Matthews could provide the Tribunal with details of the monitoring regime. There had been a change in the management of English Landscapes and its had employed extra park rangers. In addition, the costs under the previous contract were greater than the estimated costs under the new contract.

9. The Tribunal allowed the estimated costs of £4,554 for this service charge item as being reasonable. It was accepted by the Respondent that the standard of the grass cutting had not historically been good. The Tribunal was reassured by the changes made in the management and personnel of the contractor, English Landscapes. The Tribunal accepted that the Applicants were not formally required to be consulted by the Respondent about the placing of this contract because the cost per leaseholder was below the £100 statutory threshold. The Tribunal also accepted the explanation given all behalf of the Respondent that informal consultation with leaseholders was not

appropriate before the placing of this contract because it covered such a large geographical area. To informally consult on this scale just in relation to this estate or block would have placed a disproportionate obligation of the past of the Respondent.

(b) External Decorations and Repairs

10. The estimated total block cost of these works was £14,687.50, which also included the cost of replacing the front doors (see below). The Applicants contended that they had not been consulted by the Respondent in relation to these works. In the alternative, they works have been carried out to certain properties and where this had been done, the work was not of a proper standard. For example, only one facia board on their property had been decorated and this had not been prepared or sanded before the work was carried out. Their windows had not been oiled or wiped. Furthermore, only two thirds of the block had been scaffolded and ladders were used elsewhere. Mr. and Mrs. Smith contended that ladders should have been used throughout as opposed to scaffolding. This had resulted in the overall costs be too high and submitted that of the total cost, the Applicants and other leaseholders should only be required to pay a total contribution of £4,000.

11. It was submitted on behalf of the Respondent that consultation pursuant to s.20 of the Act had been carried out. On 18 June 2004, Notice of Intention had been served on all leaseholders of the Respondent's intention to enter into a long term agreement regarding the external repairs and redecoration of the blocks on the estate. On 2 February 2005, the Respondent wrote again to all

of the leaseholders with a Notice of Proposals setting out the tender prices received from six contractors for the estimated cost of the work to be carried out there to a five year period from 2005 to 2010. On 6 July 2006, the Respondent wrote to all of the leaseholders informing them that it had entered into a long term agreement with Redec Ltd to carry out the external repairs and redecoration as of estimated cost of £46,000. As to this figure, the Tribunal was told that it should have been £26,000 instead as a result of a more thorough site investigation having taken place. The actual total cost of the work was £22,103.65, but this was being disputed with the contractor by the Respondent. Practical completion of the works had not yet taken place as at the date of the hearing.

12. It was not accepted by the Respondent that the standard of the external repairs and redecoration was not of an acceptable standard. They had been inspected by the Clerk of Works who had picked up some matters such as missed areas and spilled paint. There had not been poor preparation. The snagging list was not substantial and Redec Ltd had been one of the better contractors employed by the Respondent. As to the cost of the scaffolding, it was accepted that the cost had been quite expensive but the reason for this was the payout of parts of the estate. However, no extra costs had been incurred if the scaffolding had been erected for longer than was necessary because the costs had been fixed from the outset. It had been erected on 10 October 2006 and removed at the end of November 2006. The original estimated cost for the scaffolding was £5,000 but the actual cost was £11,000. The explanation given for this was

that 'cherry pickers' could not be used as extensively as had been anticipated, for example, around the Dormer windows.

13. The Tribunal was satisfied that the Respondent had properly consulted with the Applicant and other leaseholders in accordance with s.20 of the Act. However, the Tribunal was of the view that the Respondent should provide greater financial clarity about the estimated costs for these works by providing a detailed breakdown showing the tenant's estimated liability. The Tribunal had not been provided with an adequate explanation as to why the estimated block costs of £14,687.50 was demanded from the Applicants. Mr Ashby told the Tribunal that the final figure was likely to be in the region of £22,000. He could not explain this discrepancy. The Applicants' actual liability for these works in the present service charge year is likely to be greater than the estimated sum claimed. The Tribunal was of the view that unless and until the Applicants could be provided with a detailed explanation or breakdown of the estimated costs supported by the actual figures for the increased costs, the Applicant's liability should be limited to the initial estimated sum of £14,687.50. In the event that the Applicants are provided with an explanation and/or breakdown for the increased costs and they remain dissatisfied, then they can bring a fresh application for a determination in relation to the additional cost claimed by the Respondent. Accordingly, at the present time the Tribunal finds the estimated service charge costs of £14,687.50 for the external repairs and redecoration as being reasonable.

(c) Replacement of Front Doors

14. These costs formed part of the overall costs for the external repairs and decorations dealt with above. The Applicants contended that they were not aware of which doors had been replaced because they were in disrepair. Mr and Mrs Smith said that the Applicants' front doors had not bee replaced and that they should not have to pay for the doors of other tenants that had been replaced.

15. Mr Ashby said it had originally been proposed that all of the windows on the estate would be replaced with uPVC windows and to also replace the front doors. This was to be done under an existing long term agreement entered into with Redec Ltd on 1 August 2000. The only statutory consultation required was the letter dated 6 July 2006 sent to all leaseholders, which was also part of the consultation process for the external repairs and redecorations. The estimated cost of replacing the windows and doors was placed at £94,000. However, it was subsequently decided that the windows on the estate should be repaired instead. It was confirmed that the Applicants' front doors were not going to be replaced but, nevertheless, they had a contractual liability to contribute towards these costs even though they had not received a direct benefit. It was also confirmed that the cost of any doors that had been replaced that were not in disrepair was not being recharged to the service charge account.

16. The Tribunal accepted that the contract to replace the front doors was being carried out under an existing long term agreement with Redec Ltd and that the

Respondent had consulted properly in accordance with the relevant statutory requirements. The issue of whether or not the Applicants had their front doors replaced was irrelevant. Under the terms of their leases, the Applicants are required to contribute, by way of a service charge, to the cost of replacing some of the front doors in their block whether or not they received a direct benefit. The Tribunal was satisfied that these costs had been incurred by the Respondent pursuant to the Fourth and/pr Fifth Schedules of the leases and were recoverable through the service charge account. The Tribunal, therefore, allowed these costs as being reasonable.

(d) Block Lighting

17. The estimated cost claimed for this item was £3,084.53. The Applicants simply submitted that the electricity meters should be read and the actual expenditure claimed as opposed to an estimated sum. The amount sought appeared to be excessive.

18. On behalf of the Respondent, it was said that the electricity suppliers read the meters once a year and to do so more frequently was not practical. The service charge demand does not coincide with the end of the year for the meter reading and this was the reason why an estimated amount was being demanded. The estimated figures are based on the estimated figure for 2004/2005 as a base figure, to which an inflationary increase was added. However it was conceded that this was flawed as being too high and that was likely to be reduced once the actual costs were known.

19. Again, the Tribunal found the explanation given by the Respondent for the large increase in these costs unacceptable. It was conceded on behalf of the Respondent that the estimated costs were both large and excessive. They would be subject to a significant reduction at the end of the year when the electricity meters were read and the actual costs known. There was no evidence to support the explanation given by the Respondent for the calculation of the estimated costs. There was no evidence of either the actual costs incurred 2004/2005 or 2005/2006, which should have been available at the time of the hearing. The Tribunal, therefore, determined that until the actual cost of lighting of the communal areas had been ascertained for the present service charge year, the Applicants' liability should be limited to £10 each and the Tribunal find in these terms.

Section 20C – Costs

20. The Tribunal was told that the costs incurred by the Respondent in these proceedings were £2,500-3,000. However, the Respondent was limiting recovery to £1,000. It was conceded that there was no express provision in the leases that allowed for the recovery of these costs.

21. On the basis that there was no express provision in the leases, and therefore no contractual entitlement, that allowed the Respondent to recover its costs in these proceedings, it was not necessary for the Tribunal to consider this application by the tenants or to make any order: see ***Sella House Ltd v Mears*** [1989] 12 EG 67.

Dated the 15 day of February 2007

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)