RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of decision 27A of the Landlord and Tenant Act 1985, and in the matter of Sections 19 and 20C of the Landlord and Tenant Act 1985

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/18UH/LIS/2005/0009
Property:	**Trehill House** **Kenn** **Exeter** **Devon EX6 7XJ**
Applicant:	Ms P F Pugh
Respondent:	Trehill Ltd Represented by P Muzzlewhite of Whitton & Laing
Date of Application:	18 March 2005
Inspection:	12 July 2005
Members of the Tribunal:	Mrs T Clark (Barrister at Law) Chairman T Dickinson BSc FRICS IRRV
Date decision issued:	10 August 2005

1. The Application

1.1 By an application dated 18 March 2005 Ms Pugh sought a determination of liability to pay service charges in respect of driveway repairs at Trehill House (as above) which were carried out in 2002.

1.2 On the same date Ms Pugh also applied to limit the landlord's power to recover the costs of the proceedings by way of service charges.

1.3 Directions were issued on 6 May 2005, and the Tribunal Members attended the property on 12 July 2005 and viewed the relevant areas in the presence of both Ms Pugh and Mr Muzzlewhite.

2. Description

2.1 Trehill House is a large house set in its own grounds, with outbuildings and cottages in the immediate area. The main building is divided into 11 residential units, and there are an additional 6 other units which share the entrance drive.

2.2 Whilst some of the units are freehold and others leasehold, the Tribunal were informed that all of them have documented liability for contributions to service charges.

2.3 Ms Pugh's flat, No 4, is subject to a long lease, a copy of which was supplied with the case papers.

2.4 The property as a whole is managed by Mr P Muzzlewhite of Whitton and Laing, on behalf of Trehill Ltd, the freeholder, and has been so managed since August 2001.

2.5 The works in dispute concern surface repairs to the driveway, access and parking areas.

3. The Lease

A copy of Ms Pugh's lease was exhibited with the case papers, and the Tribunal noted the following relevant clauses:-

Clause 5

The lessee covenants with the Lessor that he will:-

Clause 5(b)(i)

..... "pay to the Lessor 8% of the costs incurred by the Lessor in complying with the sub-clauses (d)(e) and (f) of Clause 6 hereof and of reasonable provision for anticipated expenditure in respect thereof".

[Sub-clauses (d), (e) relate to maintenance, redecoration and repair of the main structure, the water supply and sewage system, and the lifts and garage blocks. Clause (f) relates to the Lessor's obligation to insure the property].

Clause 5(b)(ii)

..... "pay to the Lessor one ninth of the costs incurred by the Lessor in complying with sub-clauses (g) and (h) of Clause 6 hereof and of reasonable provision for anticipated expenditure in respect thereof".

[Sub-clause (g) refers to keeping the "North Drive coloured brown....." in good repair, and sub-clause (h) refers to keeping the gardens "tidy and well cultivated".

Clause 5(c)

..... "indemnify the Lessor against all outgoings payable in respect of the property".

For the purposes of the Tribunal it was clarified that the "North Drive coloured brown" represented the entire length of the driveway and access in respect of which the disputed repairs were carried out.

4. Relevant Law

The Law relating to service charges is contained in Section 19 of the Landlord and Tenant Act, and in the new Section 27A of the said Act, which came into force in 2003. Section 20 of the original Act is also relevant.

1. Section 19 provides that service charges must relate to "relevant costs" which have been "reasonably incurred" and where the work is of a reasonable standard".

2. Section 27A enables the leaseholder to apply to the Tribunal for detailed determination on the issue of service charges.

3. The case of Plough Investments Ltd – v – Manchester City Council (1989) 1 EGLR 244 indicated a test for determining 'reasonableness', by considering whether the landlord would have chosen that method of repair if he had to bear the cost himself.

4. Section 20 of the 1985 Act sets out the requirements which must be complied with by a landlord for works costing over £1,000.

Section 20(4)(a)

requires at lease two estimates for the works to be obtained.

Sections 20(4)(b) and (c)

require the landlord to give notice (accompanied by copies of the estimates) to all tenants and to invite observations for consideration.

If these requirements have not been complied with, the tenants' liability to pay for the works may be limited to £1,000.

5. Section 20 (a) of the 1985 Act confers jurisdiction on the County Court to dispense with the consultation requirements and to allow the costs of works over the £1,000 limit if the landlord has acted reasonably.

As this issue arose prior to the implementation of the new Regulations and the Commonhold and Leasehold Reform Act, the Tribunal has no jurisdiction to determine the issue of non-compliance with [or dispensation from] consultation requirements.

6. Reference has been made to the tenants' right to 'nominate' a contractor, but this right is only created by the "Service Charge (Consultation Requirements) (England) Regulations of 2003, and is only relevant to charges arising post-October 2003.

7. Section 20C of the 1985 Act deals with limitation of landlord's costs of proceedings, according to what is "just and equitable in the circumstances".

Tenant/Leaseholder's Case

The Tribunal received and considered written representations from Ms Pugh, (together with plans, correspondence and relevant documentation), both before and after the inspection on 12 July 2005. The objections to the charges made for works to the driveway are summarized as follows:-

1. The tenant contends that the landlords and/or their agents failed to comply with their obligations as to consultation, obtaining of estimates etc., and that the specification was unclear.

2. The tenant's view is that the works were not completed to a "reasonable standard", in that the original job was not well done, and certain areas of the driveway are still uneven and collect water in wet weather.

3. Ms Pugh also does not accept the method of apportioning costs between the various residential units.

4. It is further argued that the managing agents have failed to respond to correspondence adequately, and that their system of accounts for the property is unsatisfactory.

5. In the circumstances, Ms Pugh argues that it would be unjust for the landlords to recover the costs of these proceedings by way of service charge contributions.

6. It is also suggested that the agents accepted a cheque from Ms Pugh for a proportion of the amount claimed which she tendered "in full and final settlement".

Landlord/Freeholder's Case

The Tribunal received and considered written representations and documentation from the landlord's agent both before and on the day of the inspection on 12 July 2005. The landlord's case can be summarised as follows:-

1. Estimates/quotations were correctly sought from 4 or 5 independent contractors, only one of whom actually produced any response. The agents notified the tenants in April 2002 (bundle page 60) of works which were to commence in June/July 2002 and the costs thereof, with some form of specification. Further delays were impossible, due to complaints from some residents as to the urgent need for repairs.

2. Whilst there is some sign of wear and tear in the Tarmac after 3 years, the landlords say that the work overall was done to a reasonable standard at the time.

3. The costs to each unit were apportioned by carefully measuring the square meter area of each section of repair, and dividing the cost according to the number of tenants using that particular section.

The landlords contend that this was the fairest way of calculating liability and contribution.

4. The landlords contend that they have produced budgets, obtained accounts and held meetings with residents in accordance with their obligations.

5. It is further argued on behalf of the landlords that, given their limited income from 12 leasehold units at £20 per year, it would be unjust for them to bear the costs of the proceedings.

6. Finally, the agents state unequivocally that Ms Pugh's cheque for £55 was **not** accepted "in full and final settlement" for the amount of service charge claimed.

Tribunal Findings

1. Consultation/Section 20 Obligations

1.1 As stated above, since this matter arose prior to the changes in the law, the Tribunal does not have jurisdiction to "dispense with" the requirements of section 20, such jurisdiction resting only with the County Court. The landlords or their agents could theoretically apply to the Court for a determination on this issue, in order to confirm the validity of their claim for more than £1,000, but it would perhaps be

helpful for the Tribunal to express a view as to whether or not the landlords have acted reasonably, and whether or not dispensation would have been justified.

Estimates

1.(a) The landlords appear to have used their best endeavours to obtain **more** than the required number of estimates. It would, perhaps, have reassured tenants to have seen copies of letters sent to the various contractors, with the latter's details, but this is not a requirement of Section 20.

It is difficult to imagine what else the landlords could reasonably have been expected to do if they were unable to obtain more than one estimate despite their best efforts.

Notice

(b) The landlord's letter of 8 April 2002, informing tenants of the proposed works, and explaining the difficulties over estimates, had a specification from Orchard Developments (doc 3, bundle pages 60 and 61) attached to it.

Whilst the sections of the drive concerned were not clearly identified, and it would have been helpful to have a map or plan attached, the specification itself is probably adequate for the particular circumstances.

As to the "Notice" requirements, it would appear that the landlords gave at least 28 days for tenants to make observations on the letter and estimate. Ms Pugh wrote to the agents on 28 April 2002 (doc 4, bundle page 62) objecting in some detail to the nature of the specification, and indicating a refusal to contribute to the repair works.

Although no information was actually requested in Ms Pugh's letter, the agent apparently "had regard to" her views, (which is all that he is required to do by the somewhat woolly wording of Section 20(4)(e)), and replied with a fairly full letter dated 27 May 2002 (doc 5 page 64).

(c) Urgency

Much of the relevant case law refers to works which had to be carried out urgently, without delays for consultation. It would appear from the correspondence that some tenants were complaining of damage to vehicles as a result of driveway disrepair, and although this situation could not be described as a 'structural emergency', it could well be considered that, with seasonal and weather factors playing a part, the landlords acted reasonably in pushing ahead with the repairs despite some omissions in the Section 20 process.

(d) Prejudice

The final factor to be considered when determining the reasonableness of a landlord's failure to comply with his statutory obligations is the question of whether or not any tenant has been prejudiced as a result of such failure.

There was no evidence before the Tribunal to suggest that Ms Pugh had suffered financially or otherwise as a result of the absence of an additional estimate or more detailed specification.

2. "Reasonableness" Section 19

Having clarified the position as regards the landlord's obligations under Section 20, the Tribunal have expressed their views but cannot make any binding ruling as to whether or not the landlord can recover the full cost of works despite procedural failures.

It therefore remains for the Tribunal to find whether or not the costs were "reasonably incurred" (Section 19(1)(a)) and whether or not they were "of a reasonable standard" (Section 19(1)(b)).

2.1 "Reasonably incurred"

The Tribunal found that the total cost of the works as described in the specification and inspected on site was entirely reasonable in the circumstances. Whilst 10 ml of bitmac is only sufficient for a fairly basic resurfacing job rather than for a major improvement in quality, the total cost for the various sections of tarmac was appropriate and competitive.

The works clearly needed to be done, as can be seen from the correspondence and as described during the Tribunal's inspection, and the contractors complied with the contract and (we were told) completed the work for slightly less than the original quotation.

Thus, the Tribunal found that the costs of £4,360.48 were "reasonably incurred".

Had the tenants made representations to the effect that they wanted a thicker layer of tarmac over a greater area, or with more substantial re-laying of the hardcore base, the costs would have been proportionately greater.

As to the suggested 'test' mentioned above, the Tribunal considered that the landlord would have chosen that method of repair if he had to bear the cost himself.

[It is also worth noting that, when 2 comparative estimates for slightly different driveway repairs were obtained in 2000, (doc 41 page 131) Orchard were the cheaper of the two, and therefore both landlord and tenants could have regard to that in the absence of a comparative estimate in 2002].

2.2 "Reasonable standard"

Upon inspection, the Tribunal members were satisfied that, whilst the driveway surface was far from perfect, it appeared to have been repaired to a reasonable standard considering the specification, budget, and lapse of time since then.

The section giving access to the main door of the house, from the garage area to the door, was in good condition and seemed to be of a good standard.

The two sections of new tarmac at the top of the "ski-slope" and leading down towards Glen cottage were adequate.

The section of new tarmac along the main drive between the two cattle-grids was of a fair standard, given that that particular area of the drive was at a low point.

There was some slight damage at the edges here, and the surface had not been 'cambered' in such a way as to prevent water collecting in pools.

However, in all the circumstances the Tribunal found that the works were of a reasonable standard, and that the absence of sealed edges (for example) was not particularly relevant to works of this nature.

3. Recoverability/Apportionment/Liability

3.1 Under Section 27A as above, the Tribunal are asked to determine Ms Pugh's liability to pay the service charge claimed.

Given the provisions of the lease, the Tribunal found that the payment for driveway repairs was certainly recoverable by way of service charges, and that the tenant has a prima facie obligation to pay her share thereof.

3.2 In determining the overriding question of "reasonableness", the Tribunal have to consider whether the method of apportionment employed by the landlord was reasonable.

We were told that, because of the anomalies in the various leases and service agreements, and in the light of previous (apparently arbitrary) adjustments and apportionments, the landlord's agent tried to employ a fairer method of calculating liability in accordance with the Schedule attached to their statement of 17 June 2005.

The effect of this was to charge individual tenants in proportion to their use of the drive(s).

3.3 The Tribunal found that this was a fair and justifiable method of calculating liability, and that the landlord's agent was reasonable in departing from the precise percentages set out in the leases in this instance.

Had Ms Pugh's lease been followed exactly, she would have been liable to pay 1/9 of the total costs, **regardless** of anyone else's obligation, and 1/9 would have been approximately £484, rather than the £281.24 plus 10% and VAT which she was actually billed for:- (doc 13 page 74/75)

[Note that the agent had wrongly charged 15% for his fees rather than 10%].

3.4 Thus, it cannot be said that Ms Pugh has been in any way prejudiced by the landlord's system of apportionment: on the contrary, she has benefited thereby.

[It should be noted that the Lease, if strictly complied with, could be used to demand a $1/9^{th}$ share from Ms Pugh. However, rather than seeking to remedy the lease anomalies by devising new and different systems, any party could now apply to the LVT under the Commonhold and Leasehold Reform Act 2003 Section 35 to vary the terms of the leases and set up a sensible system of apportionment for future use].

4. Management Issues: Accounts and Failure to supply information

Finally, Ms Pugh raised a number of issues with regard to the landlords' (and/or their agents') failure to answer letters adequately, failure to supply more detailed information on request, and failure to keep the monies in respect of the driveway repairs separate from the general service charge account.

The Tribunal considered that there had been a number of occasions when additional information could have been helpful, and that there were valid criticisms of the management, but these considerations would more properly be the subject of an Application for Appointment of a New Manager, and were not within the jurisdiction of this particular Tribunal on a specific issue as to service charges.

As to the question of accounts, the Tribunal found that there was no legal or other obligation on the landlord to keep these monies in a separate account. As to the preparation and distribution of annual service charge accounts, that is another matter which goes to adequacy and efficiency of management generally, rather than to the particular issue in this case.

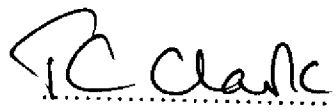
Summary and Conclusion

On all the evidence available, and with the benefit of their own previous knowledge and experience, the Tribunal found that the costs claimed from the Applicant by way of service charges in respect of driveway repairs in 2002 were reasonably incurred, and the works were of a reasonable standard in the circumstances.

The Tribunal did not consider that the agent's acceptance of Ms Pugh's cheque (for part of the amount claimed) prejudiced the claim to the remainder.

Costs

The Tribunal ruled that the landlord's costs of the proceedings recoverable by way of service charges should be limited to a maximum of £400.



T CLARK (Chairman)