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LON/00AH/LSC/2005/0120

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Property: **2a and 2b Clifford Road, South Norwood, London SE25 5JJ**

Applicant: Fanduke Co Limited (landlord)

Respondents: F A and M S Qureshi (leaseholders of Flat 2a)
E A McNeish (leaseholder of Flat 2b)

Date of hearing: 15 and 16 November 2005
(Inspection 22 September 2005)

Appearances: Mr S Ilyas, counsel, instructed by Smithson Clarke, solicitors
Mr D J King TechRICS MIMBM MaPS, of Building Surveying Consultants
Mr R Chappell C Eng F I Struct E
Mr A Horowitz of Fanduke Ltd and A & P Management, managing agents

for the applicant

Mr P K Solomon BSc MSc (Est Man) FRICS FCIArb, of P K Solomon & Co, chartered surveyors
Mr G Howell, of G H Law, for Mr E A McNeish
Mr M A Qureshi

for the respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mr M Mathews FRICS
Mrs M Colville BA (Law) JP

Date of the tribunal's decision: 20 February 2006

Summary of decision

The tribunal determines that the proposed works are necessary and that (with the few exceptions set out below) their costs will, if the works are carried out to a satisfactory standard, be reasonably incurred. The tenants' defence of past neglect by the landlord is rejected. The landlord is entitled under the leases to recover a due proportion of the reasonable costs of the works, including works which benefit the shop premises. This proportion equates to the proportion which the rateable value of each flat bears to the total rateable value of the three flats, and that accordingly the tenant of 2A must pay 37.5% of the reasonable costs and the tenant of 2B must pay 25%. The leases permit the recovery of the landlord's reasonable costs in relation to the proceedings and, since the landlord has acted reasonably in relation to the proceedings, no order is made under section 20C of the Landlord and Tenant Act 1985.

Background

1 This is a landlord's application under section 27A(3) of the Landlord and Tenant Act 1985 (2the Act") to determine the respondent tenants' liability to pay for works which the landlord proposes to carry out to repair and refurbish the exterior and common parts of 2 Clifford Road, South Norwood.

2. 2 Clifford Road is an end terrace building on basement, ground and two upper floors which was built in the late nineteenth century. It now comprises three flats and a shop. Flat 2A is on the basement and the rear part of the ground floor; Flat 2B is on the first floor; and Flat 2C is on the second floor. The shop premises are at the front of the ground floor. The flats are held on long leases: the leases of 2A and 2B are held by the respondents, and the lease of 2C is now held

by the freeholder, Fanduke Limited.

3. The leases of 2A and 2B are each dated 26 October 1988 and are for terms of 125 years from 29 September 1988. Each contains covenants by the landlord to maintain, repair, replace and renew the common parts, which are defined as "the foundations main structure roof roof supports external walls main entrances passages landings staircases chimney stacks ... gutters and rain water pipes and tanks of the Building not comprised in the Demised Premises or any other flat in the Building granted or to be granted by the [landlord] and the boundary walls and fences of the Estate." "The Building" is defined as "2 - 2a Clifford Road SE25". The leases of the flats describe the flats by reference to the floors on which they are situated and not as "2A" and "2B".

4. The leaseholders covenant to pay "the due proportion" of the costs and expenses of the Service Obligations ... together with either the reasonable charges of the Managing Agent ... or (if the [landlord] shall undertake the management itself) a reasonable management fee of not less that fifty pounds such sum to be adjusted by reference to the increases (if any) in the Retail Prices Index in the relevant year ...". The ground floor flat is identified by reference to a plan which shows the shop premises which are marked "existing shop". "Due proportion" is defined by Part 6 of the Schedule as "the proportion the rateable value of the demised premises bears to the aggregate of the rateable value of the flats in the Building".

5. The lease of the shop, which is for a term of 20 years, reserves a rent of £4000 per year and provides that the tenant of the shop must pay as additional rent the sums paid by the landlord to insure the demised premises, or a fair proportion to the premium if the landlord insures the building as a whole. In addition, the shop tenant covenants at clause 3(5) to pay "a fair proportion to be conclusively determined by the Surveyor for the time being of the Landlord (whose decision shall be binding upon the Tenant") of the expenses payable in respect of

constructing repairing rebuilding cleansing lighting and maintaining all roads pavements ways yards party walls fences external fire escapes gates railings pipes wires sewers drains and other things (if any) the use or enjoyment of which is common to the demised premises and to other premises."

6 The tribunal inspected the property in the morning of 22 September 2005 in the presence of Mr Ilyas, counsel for the landlord, Mr D J King TechRICS MIMBM MaPS, of Building Surveying Consultants, the landlord's surveyor, and Mr R Chappell C Eng F I Struct E, the landlord's structural engineer; and of Mr P K Solomon BSc MSc (Est Man) FRICS FCIArb, of P K Solomon & Co, chartered surveyors and Mr M A Qureshi, who is the husband of one of the tenants of 2A and the son of the other.

7. At the hearing, which commenced after the inspection, we informed the parties, and they agreed, that the leases of the flats and of the shop were potentially inconsistent in that it was arguable that the leases of the flats should, as the tenants maintained, be read as requiring the tenants of the flats to pay only the due proportion of the relevant costs of the works after deduction of the costs payable by the tenant of the shop, rather than, as the landlord maintained, the "due proportion" of all the costs of all the works. The hearing was therefore adjourned and directions were made for the service of the application and other documents on the tenant of the shop, who was given the opportunity to be heard if he wished. The documents were duly served on the tenant of the shop, but he chose to take no part in the proceedings. Directions were also made for the filing of other evidence, including an up-to-date estimate of the likely costs of the works, the then estimate being nearly three years out of date.

8. At the adjourned hearing on 15 and 16 November 2005 Mr Ilyas appeared for the landlord and called as witnesses Mr King, Mr Chappell and Mr Horowitz, who is a director of Fanduke Limited and of A & P Properties, the managing agents. Although Mr King had prepared the

specification for the works and is proposed as the contract administrator, and is thus not truly independent, he said that he recognised his duty as a chartered surveyor to give independent and unbiased evidence and that his primary duty was to the tribunal rather than his client, and we are satisfied that he complied with these principles. Likewise, Mr Chappell had been instructed by the landlord to advise on structural problems which affect the building, but we accept that his evidence to the tribunal was impartial and designed to help the tribunal rather than his client. Mr Solomon appeared as advocate and expert witness for both tenants. Mr Howell of G H Law appeared for Mr McNeish. Mr M A Qureshi gave evidence.

9 It was agreed by the tenants that the building was in urgent need of repair and refurbishment. Their case, in general terms, was that the work was over-specified for a poor quality building in a relatively low value area, that some of the costs were excessive, that some of the works were improvements rather than repairs and thus not covered by the lease, and that in many instances the costs had been inflated by the landlord's past neglect.

Chronology

10. We are indebted to Mr Ilyas for the written chronology which he helpfully prepared. We do not propose to set out the relevant chronology as fully as he has done, although we have borne all of it in mind. The most significant aspects of the history are as follows.

11. The building was converted into flats by the present landlord in 1989, prior to its purchase of the freehold on 30 November 1989. A Building Control Completion Certificate stating that the requirements of the Building Regulations had been satisfied was issued after an inspection on 12 October 1989.

12. Mr Qureshi's family took an assignment of the lease of 2A in November 1992. At some time in the early 1990s an informal agreement was reached between Mr Qureshi and, it is assumed, the then tenants of 2B and 2C, to the effect that the tenants would repair and maintain the building and the landlord would not accumulate a sinking fund for that purpose (see correspondence in the landlord's Bundle 2 at pages 68 - 70). Mr McNeish took an assignment of 2B in August 2003. In 1997 Mr Qureshi wrote to Mr Horowitz asking the landlord to carry out works to a fence, and on 1 September 1998 Mr Horowitz wrote to Mr Qureshi (Bundle 2, page 74) to say that the landlord had instructed the managing agents to annul the arrangement whereby the tenants would look after the building, and that the landlord would henceforth do so.

13. In December 2002 the managing agents instructed Mr King to carry out a full survey of the building, and, having inspected the property, Mr King, in February 2003, prepared a specification of what he considered to be the necessary works. The specification was put out to tender and the lowest tender was returned by Longmarsh Building Contractors at £78,060. Section 20 notices were served on 10 March 2003, stating that the cost of the works would be £78,060 together with professional fees, management charges and VAT, a total of £110,523.20.

14. On 20 March 2003 Mr Qureshi wrote to the managing agents to say that he considered that the estimates were inflated and unreasonable and that his own builder could do all the necessary work for £10,000. The managing agent supplied Mr Qureshi with Mr King's address so that Mr Qureshi's builder could tender for the work. However Mr King received no request from anyone for a tender pack, and no response was received to the section 20 notices.

15. Mr Qureshi then instructed Mr Solomon, who on 30 June 2003 wrote to the managing agent to say that the extent of the proposed works had been exaggerated, that the landlord had neglected the maintenance of the property, and that if no proposals were made within 14 days an application would be made to the tribunal. Mr Solomon and Mr King met at the property on

19 November 2003 but were unable to reach agreement about the extent of the works required. The landlord issued the present application on 10 May 2005 and directions were made for the filing of evidence and the hearing. Some of the documents relied on by Mr Solomon at the hearing were filed rather late and in breach of the directions, but we admitted them in the interests of justice

Decision

1. General

16. The tenants relied on a quotation in the form of a letter from Mr Bacchus of Homemaker Builders dated 1 August 2005, who is the builder whom Mr Qureshi had described as able to do the work for £10,000. Mr Bacchus's letter is at page 21 of the tenants' bundle. A letter from Mr Solomon to Mr Bacchus dated 3 November 2005 on which Mr Solomon had hand written some prices apparently given to him by Mr Bacchus over the telephone was also put before us. Mr Bacchus was not called to give evidence and it was clear that he had, unfortunately, never been asked to price the works as specified by Mr King, so that in most instances it could not be established that the works for which Mr Bacchus had quoted were the same as the works for which Longmarsh had quoted.

17. Before the adjourned hearing Mr King established that Longmarsh remains able and willing to carry out the specified works but that the costs will now be 15% more than those quoted in 2003. The BICS Tender Prices Index shows a 16% increase over the relevant period, and Mr Solomon and Mr Howell accepted, as we do, that the proposed inflationary increase is reasonable.

18. The works specified by Mr King were listed in a Scott Schedule on which the parties' cases on each item were set out. The Schedule is a bulky document, and the parties' positions changed to some extent as the case proceeded. We do not, therefore, propose to attach the Schedule to this decision but the decision will follow the order in which the items are listed on the Schedule.

2. Landlord's past neglect

19 The tenants alleged that the scope of the works had been increased by the landlord's failure to maintain the building in the past.

20. We accept that there may be some circumstances in which tenants may be able to show that the costs of works of repair have been increased because of a landlord's inexcusable failure to maintain a building. However, the burden in this situation is on the tenants to show by good evidence that this is so, and also, as it seems to us, that the present costs, when set against the costs saved in the past because repairs were not undertaken, increased to take account of inflation, are greater than they would have been if the landlord had properly maintained the building. It is clear in the present case that this building has not been well maintained, although some maintenance has been carried out, but the tenants have not in our view begun to show that the works now required have increased in scope and cost because of the landlord's past neglect. Mr Solomon, who is not a building surveyor, was unable to identify any particular costs which had increased because of the landlord's past neglect. Had he done so, it is arguable that the landlord might have been able to rely on the informal agreement between him and the tenants that the leaseholders would maintain the building, but in our view the tenants have not got beyond the first hurdle of establishing that the costs have been increased overall by reason of the landlord's past neglect.

2. Scaffolding

21 Longmarsh have quoted £9500 for scaffolding, which, with the 15% added for inflation, is £10,925. Mr King agreed that this was "on the high side", but said that it included a scaffold tunnel over the path at the side of the building which was necessary for public safety, as well as sheeting and alarms. The tenants' case, based on Mr Bacchus's quotation, was that the scaffolding should cost £6850 (an increase of £850 from the price in the Scott Schedule), based on a period of hire of four weeks at £300 per week. Homemaker Builders do not appear to be registered for VAT. Alternatively, they said, based on a quotation from Kingswood Scaffolding Co dated 1 September 2005, the cost should be £2750 for a minimum hire period of four weeks with additional weekly hire at £110 per week, plus £480 to net the scaffold and £340 plus £30 per week to alarm it.

22. Mr King said that on 29 September 2005 he had asked Kingswood Scaffolding Co to price the scaffolding based on the requirements of the specification. He said that they had given him a price of £6932 plus VAT for a period of four weeks, with an additional £160 per week thereafter, to include erection and dismantling. In addition the main contractor would add 10%.

23. We accept that the scaffolding charge proposed by the landlord, which is part of a lump sum tender, is not unreasonable. In such a tender, some charges may appear on the high side, as Mr King agreed that this charge does, and some may be low. In any event, analysis of the quotations from Homemaker and Kingswood shows that their prices are much the same as Longmarsh's. Accordingly we determine that a cost for scaffolding which is at or close to the proposed charge will be reasonably incurred and recoverable.

3. Temporary support and strengthening of the roof, and the demolition and rebuilding of

the flank wall and the installation of tie beams

24. It was agreed that the flank wall of the building is out of alignment and potentially dangerous. The method proposed by the landlord to rectify the problem, based on the advice given by Mr Chappell, is to rebuild part of the flank wall, strengthened with ties, while providing temporary support to the roof while the works are carried out. The probable cost of the works according to Longmarsh's priced specification is £4500 (including a provisional sum of £2500 for structural engineer's fees) for providing temporary support to the roof, £4300 for demolition and £4600 for rebuilding, in each case plus 15% for inflation. In their comments in the Scott Schedule the tenants maintained that the wall did not need to be demolished and re-built and that all that was required was to cut out and repair rendering cracks. However, two letters from Mr David Williams of Bell Buttrum, consulting engineers, who had been consulted by the tenants but was not called to give evidence, dated respectively 5 September and 1 November 2005, were put before us. In the latter, Mr Williams agreed that rebuilding of the top section of the flank was desirable, and probably the better solution. Mr Chappell explained that the flank wall was dangerous and could not be brought back into alignment other than by rebuilding it, and the use of Helifix bars, which Mr Solomon had suggested as a possible method, would not be effective. Having heard the evidence, Mr Solomon accepted that the work needed to be done in the manner proposed by Mr Chappell, that Mr Bacchus had not priced the work and he therefore had no alternative price to put before us.

25. Mr Solomon had argued that the works were required either because the building had not been correctly built in the first place or because landlord had not converted the building properly in 1989. At the hearing he abandoned the suggestion that the building was inherently defective because not correctly built in the first place. Having heard the evidence of Mr Chappell and Mr King, we are satisfied that the conversion complied with Building Regulations, having been inspected and certified as set out in paragraph 11 above, and that it has not been shown that the

method of conversion was inadequate

26 We are satisfied that the works proposed by the landlord are necessary and not over-specified, that the use of Helifix bars would be inappropriate, and that the costs proposed are reasonable and will be recoverable from the tenants.

4. Cutting back and removing all rendered surfaces from front, side and rear and inner roof elevations, re-rendering and redecoration

27. This item is priced in the specification at £2250 for cutting back and removal and £12,600 for re-rendering and decoration (plus 15%). However Mr King agreed at the hearing that it would be more appropriate to include these items as a provisional quantity at a rate which, based on a quotation which he had obtained from a firm called Plastering Specialists (page 269 of the landlord's first bundle), was likely to be around £50 per sq m for hacking off, re-rendering and re-decoration. The tenants agreed that it was appropriate to include these items as a provisional quantities but and, having heard the evidence, and on the basis that the charges would be based on provisional quantities, agreed that the proposed charges were reasonable

28. We are satisfied that this work is necessary and that the rate proposed is reasonable

5. Renewal of timber lintels and the installation of metal lintels

29. Having maintained that this work was necessary because of the landlord's neglect, and/or that the works involved improvement the cost of which was not recoverable, and/or that the lintels were the individual tenant's responsibility and not a service charge item, the tenants in

the end agreed that this work was necessary and the cost, which was £1550 (plus 15%) based on a provisional quantity of six metal lintels, was reasonable. We agree.

6. Repair of cracks to exposed brickwork by the use of Helifix bars

30. The landlord proposed to use a specialist subcontractor recommended by Helifix, Poulton Remedial Services Limited (quotation at page 265 of the landlord's first bundle), for this work. Their price as at 10 July 2005, based on a provisional quantity of 100 Helifix bars, was approximately £3000 plus VAT, and the total cost estimated by Longmarsh, including Poulton's price, estimated at £6500. Having heard the evidence, Mr Solomon and Mr Howell agreed that the work was necessary and that it was reasonable to use the specialist contractor proposed. We are satisfied that the proposed work and cost are reasonable (with an appropriate inflationary increase if necessary).

7. Overhaul raised brick parapet party wall and chimney stack and re-point

31. The proposed cost of the work is £490, plus 15%. Mr King described the condition of the wall and chimney stack and explained the necessary work. Mr Solomon agreed that some repairs of this category were necessary but considered the price excessive. He agreed that Mr Bacchus had not quoted for this work and that he had no alternative price to propose.

32 We accept that the works are necessary as specified and that the price proposed is reasonable.

8. Overhaul front parapet wall and provide coping stones

33. The price proposed for this work is £1250 plus 15%, which Mr King agreed to be on the high side and which he agreed to attempt to renegotiate. The tenants agreed that the front parapet wall requires some work but considered that the provision of coping stones was an improvement for which the tenants were not liable to pay. Mr King said that coping stones were necessary as part of the required repair and, in the long run, more economical because they would reduce the need for future maintenance.

34. We accept that this cost, to be renegotiated if possible, is within the range of reasonable costs and that the provision of coping stones is a sensible method of repair rather than an improvement.

9. Rainwater pipes and hopper heads

35. The price proposed for this work is £225 plus 15%. The tenants agreed that the work was necessary and the proposed price reasonable, but argued that the work was required because of plant growth in the hopper heads, caused by the landlord's past neglect. Mr King said that there was no plant growth within the rainwater pipes, which had become brittle over time and required replacement.

36. We accept that the work is necessary, that the necessity to do it was not caused by the landlord's past neglect but by the deterioration of the pipes over time, and that the proposed cost is reasonable.

10. Replacement of existing timber framed windows

37. The landlord agreed that, with the exception of one small window on the rear elevation at first floor level, these were the responsibility of individual tenants and should be omitted from the contract. The tenants agreed that £300 or thereabouts, the cost proposed for the replacement of the single window with a uPVC double glazed unit, was reasonable.

11. Roof - works to central valley gutter

38. Mr King said that the full extent of the necessary work could not be known until the existing central valley gutter was removed, but the presently proposed cost of this work is £6400 for the removal and reinstatement of the gutter, together with £130 for tile ventilators and a provisional sum of £200 for removing and replacing defective lead flashings, plus, in each case, 15%. Mr King explained that the existing valley gutter had become spongy and that previous attempts to prevent the ingress of water by the application of felt, later covered in bitumen, were likely to fail, although there was no evidence that water was coming through the roof into the flat below at the present time. He said that the existing gutter was beyond repair, and its renewal in lead was the best solution. He said that zinc was unsuitable because of its short life span, and the use of fibreglass, Elastomeric or other geotechnic products would be difficult because the gutter was tapered at one end. Asked by Mr Solomon, Mr King said that, as far as he could tell, the work carried out in 1999 had been properly carried out and had been effective for a reasonable time.

39. Mr Solomon agreed that the work needed to be carried out but considered that lead was unnecessarily expensive for a property of this quality and value, although he agreed that it was the best product for the job. Having in the Scott Schedule maintained that the installation of tile ventilators was an improvement and not a repair, he accepted at the hearing that it was a repair.

40. We accept that this work is necessary and that the method and material proposed by the landlord is reasonable. While we acknowledge that lead will be more expensive than the other products which might be used, we accept Mr King's evidence that it is more suitable given the tapering shape of the gutter, and that it will be the most effective solution in the long run.

12. Roof insulation

41. The cost proposed is £450, plus 15%, to include the removal of rubbish from the roof voids. Mr Solomon agreed that insulation is now a requirement of the Building Regulations, but considered that it might be an improvement. He also maintained that the removal of rubbish was the responsibility of the person who had left it there, probably the landlord. Mr King explained that he had included the removal of rubbish in the specification as a matter fo good practice, in order to ensure that no additional charge was made if any rubbish had to be removed.

42. We accept that this work is necessary and properly specified, and that it is required by the Building Regulations. We do not regard it as an improvement.

13. Removal of dumped vehicles and cutting out and reinstatement of cracked areas of concrete to area at the rear of the building

43. It was agreed that the removal of dumped vehicles is no longer required and will be omitted. £300 (plus 15%) was allowed by the landlord for cutting out and reinstatement of the concrete surface on the basis of a provisional quantity of 5 sq m. On this basis the tenants agreed this item.

14. Rear garden wall

44. The landlord proposed a charge of £5535 plus 15% to re-fence the existing boundaries between the rear area and the neighbouring property and between the rear area and the public footpath with galvanised steel palisade fencing.

45. The tenants agreed that the fencing needed to be replaced but considered that timber fencing with concrete posts, similar to the fence between 2 and 4 (possibly also between 4and 6) Clifford Road, for which Homemaker Builders quoted £1900, would be adequate, and that a galvanised steel fence would be an improvement Mr Qureshi described the existing fence between 2 and 4 Clifford Road, which has barbed wire on top to deter trespassers. Mr Horowitz said that it would not be possible to erect concrete posts between the building and the public footpath because there was insufficient space to do so, and that a more durable metal fence had been erected in the past. Mr King said that he would not be happy with any element of barbed wire, which would be a hazard to children.

46 We are satisfied that the erection of a substantial fence such as is proposed by the landlord is necessary and reasonable and that a flimsier timber fence will not be sufficiently cost-effective or sufficiently durable. We accept Mr Horowitz's evidence that a metal fence was once in place, but in any event we do not regard the erection of a metal fence as an improvement.

15. External decoration to existing timber surfaces

47. The landlord's proposed cost for this work was £300 plus 15%. The tenants said that the need for this work was due to the landlord's past neglect and that a reasonable price for it would be £200, based on a decorator's daily rate of £100.

48 We accept that the cost proposed by the landlord is reasonable, that the work is necessary, and that the cost has not increased by reason of any past neglect by the landlord.

16. Stabiliser to all rendered surfaces and cleaning of windows after decoration

49. The cost of stabiliser was not separately priced by Longmarsh and its use was agreed by Mr Solomon. Mr Solomon considered that the cost of window cleaning (£250 plus 15%) should have been included in the price for decoration, but Mr King said that he considered it to be sensible and normal practice to specify such an item separately to avoid the risk that an additional charge might be made. We accept this and regard the charge as reasonable.

17. External mains water services, electrical cables and satellite dishes and the removal and replacement of plywood casings

50. This item was agreed

18. Installation of emergency lighting system to internal communal stairs

51. Mr King said that he understood that the building was likely to be classed as a House in Multiple Occupation and that, as such, an emergency lighting system was likely to be required under regulations shortly to come into force, and that it would therefore be sensible to carry out the work now Mr Solomon agreed that if such a system was likely to be a legal requirement the work would have to be done, although he was inclined to regard it as an improvement

52. We accept that this work is necessary and is likely to be required by the regulations. We do not regard it as an improvement but as a necessity, and we consider the proposed cost of £200 plus 15%, to be reasonable.

19. New external light over main front door, provision of two internal switched fittings, electrical test and provisional sum for unforeseen electrical repairs

53. The landlord agreed to omit the new external light and the tenants agreed that the remaining costs under this head (£800, to include a provisional sum of £400, plus 15%) would be reasonable, and we agree.

20. Decoration of internal common staircase

54. Provisional quantities were allowed for hacking off defective plaster surfaces and resin injection of cracks to the interior of the flank wall, and the tenants did not dispute these. Nor did they dispute the cost of stripping the existing carpet, the provisional cost of re-carpeting, and the cost of easing the doors over the new carpet. A price of £1750 (plus 15%) had been quoted by Longmarsh for the redecoration of the internal staircase, which Mr King agreed to be on the high side. He said that he would try to get this item reduced to £1000, and Mr Solomon agreed that, if he was successful, the cost would be reasonable.

55. We hope that Mr King will be able to re-negotiate the cost of redecoration, but we accept that if he is unsuccessful the quoted cost will be not unreasonable.

21. Professional fees

56. The landlord proposed to charge 12 5% for professional fees for Mr King, which Mr King said that he considered to be reasonable in the circumstances, although he agreed that he would charge less if the tribunal insisted. Mr Solomon agreed that the works should be supervised by a building surveyor but considered that a fee of 10% would be appropriate.

57. We are satisfied that the necessary works are by no means straightforward and justify a professional fee of 12.5%.

22. Pre-contract planning supervisor

58. Mr King said that for works such as these which would take over four weeks to complete it was necessary for the client to appoint a planning supervisor to prepare a pre-contract Health and Safety Plan. He said that in the present contract he had specified that the contractor would be the planning supervisor and had allowed a fee of 3%, which he was prepared to see reduced to 1.5% or 2%.

59. We accept that the appointment of a pre-contract planning supervisor is necessary and that a fee of either 1.5% or 2% will be reasonable.

23. Management fee

60. Mr Horowitz gave evidence that A & P Management was an independent managing agent which charged the landlord for its services. He said that he was a director, but not a shareholder,

of the landlord company, and that A & P Management charged the landlord for its services. A & P Management did not only manage properties within the landlord's ownership, but also managed a number of properties for other landlords. He said that he did not presently charge for day-to-day management of the building, but proposed to charge a management fee of 5% of the cost of the works.

61 Mr Solomon said that there was no justification for a management charge in addition to a supervision fee, and Mr Howell submitted that the landlord and the managing agent were one and the same.

62 We are satisfied that A & P Management is an independent managing agent (although in any event the lease entitles the landlord to recover a reasonable management fee if it carries out management functions itself). We are also satisfied that 5% of the cost of the works is a reasonable charge for management of the works, particularly since no other charge is made for management.

24. Apportionment

63. Mr Horowitz gave evidence, which we accept, that the landlord had not charged and did not propose to seek from the shop tenant any part of the cost of the proposed works. Mr Ilyas conceded that there was a potential conflict between the residential leases and the shop lease, in that the flank wall and the roof of the building were "things ... the use or enjoyment of which is common to the demised premises and to other premises" within the meaning of the shop lease, so that the shop tenant might be liable, if asked, to contribute to the costs. He said, however, that the residential leases were clear and unambiguous and had been drafted with the existence of the shop in mind, since the shop was identified on the lease plans. He said that the residential

leases should be given their plain meaning and that the costs should be apportioned according to the rateable value (in the present case

64 Mr Solomon and Mr Howell said that the whole structure of the building was used in common by the shop, and that the residential leases should be read on the basis that the shop tenant was liable to pay a reasonable proportion of the costs of the works and the balance divided according to rateable value. They said that the leases were ambiguous and should be construed against the landlord.

65. On balance we are satisfied that Mr Ilyas's argument is to be preferred. "The building" is defined by the residential leases as "2 - 2a Clifford Road", which we take as meaning the shop and flats at 2 Clifford Road. On balance we do not regard the residential leases as ambiguous. Part 6 of the Schedule to the lease clearly defines the "due proportion" which the residential tenants must pay as "the proportion the rateable value of the demised premises bears to the aggregate of the rateable values of the flats in the Building", and we think that effect must be given to this. It may be open to the residential tenants to apply to vary the leases under Part IV of the Landlord and Tenant Act 1987 (although this should not be taken as advice that they should do so); but unless and until that is done, we consider that the leases must be read as the landlord proposes.

25. Section 20C

66. Mr Howell submitted that the leases did not permit the landlord to recover its costs in connection with these proceedings, and, in particular, did not permit the recovery of legal fees. Mr Ilyas submitted that the lease was wide enough to cover such expenses.

67. We have come to the conclusion that the leases are wide enough to cover the landlord's reasonable costs and expenses incurred in connection with these proceedings, including legal fees, assuming them to have been reasonably incurred. The tenants' duty under clause 2(f)(i) of the lease is to pay the due proportion of "the costs and expenses of the Service Obligations". "Service Obligations" are defined by clause 1(i) as "the obligations on the part of the lessor to provide the services specified in clause 3(b) hereof [ie maintenance and decoration etc] *and other obligations undertaken from time to time hereunder by the Lessor for the benefit of the Estate"* [emphasis added]. In our view "obligations undertaken . by [the landlord] for the benefit of the Estate" include taking such action as is necessary to recover service charges and, in a proper case, an application to the tribunal is a necessary part of doing so. Mr Solomon agreed at the hearing that the application "was a good idea", and the tenants themselves said that they were going to apply to the tribunal, although in the event they did not do so. We agree that this application was necessary and, applying the principles outlined by the Lands Tribunal in *The Residents of Langford Court v Doren* (LRX/37/2000), we determine that in all the circumstances, including the parties' conduct in relation to the proceedings and the result of the application, in which the landlord has been successful, the landlord may place its reasonable costs on the service charge, and we decline to make an order under section 20C of the Act. We emphasise that we are not at this stage determining the reasonableness of the costs, nor are we determining that the landlord acted reasonably in instructing solicitors and counsel, although we found Mr Ilyas of great assistance throughout the proceedings.

CHAIRMAN.....

DATE 20 February 2006