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LON/00AM/LSC/2005/0345

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)

Applicant: Lessees of Joseph Court

Represented by: Ms Muriel Gordon MBE

Respondents: London Borough of Hackney

Represented by: Mr P Miller

Re: Joseph Court, Amhurst Park, London N16 5AJ

Hearing date: 6 & 7 April 2006

Appearances: Ms M Gordon; Mrs V Carpenter – Hackney Right to Buy
Mr M Gibbons; Mr A Garbaggini
Miss S Bogan; Mr & Mrs J Isaac-Saul
Mr C Jeffcote; Mr H Goldwater
Mr M Sunder - Observer

For the Applicant

Mr P Miller- Counsel; Ms C Tsiga – Solicitor
Ms J Morrison – Major Works Manager
Ms M Mezmin – Team Leader, invoicing
Ms S Moore – Major Works Team Leader
Mr R J Wiles – Surveying Manager
Mr A Sobowale – Project Architect

For the Respondent

Members of the Residential Property Tribunal Service:
Miss S J Dowell BA(Hons)
Mr C White FRICS
Mr D J Wills ACIB

REF: LON/00AM/LCS/2005/034

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF :

JOSEPH COURT,
AMHURST PARK, LONDON N16 5AJ

B E T W E E N :

(1) MS SHIRLEY BOGAN, 15 JOSEPH COURT
(2) MS MURIEL GORDON, 16 JOSEPH COURT
(3) MR HAROLD GOLDWATER, 40 JOSEPH COURT
(4) MR AND MRS J. ISAAC SAUL, 54 JOSEPH COURT
(5) DR A. GARBOGGINI, 65 JOSEPH COURT
(6) MR JOHN ANTHONY, 69 JOSEPH COURT
(7) MR JOHN ADEYENI, 75 JOSEPH COURT
(8) MR CHARLES JEFCOATE, 79 JOSEPH COURT

Applicants

- and -

THE LONDON BOROUGH OF HACKNEY

Respondent

THE APPLICATION

1 This is an application dated 5th December 2005 by eight lessees (who we will refer to as "the lessees") for a determination of liability to pay and reasonableness of service charges for the cost of major works carried out in 2000/2001 and for a determination of liability to pay future service charges. The Application relates to Joseph Court, Amhurst Park, London N16 which is owned by the Respondent. It is occupied by a mixture of long leaseholders and secure tenants.

SUMMARY OF STATUORY PROVISIONS

2 The Landlord and Tenant Act 1985 as amended is hereinafter referred to as "the Act" All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
  (a) which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period

Section 19 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on whether a service charge is payable and, if it is, as to
(a) the person by whom it is payable
(b) the person to whom it is payable
(c) the amount which is payable
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub section (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under sub section (1) may be made in respect of a matter which

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

THE HEARING

3. The hearing of the application took place at 10 Alfred Place, London WC1 on 6th and 7th April 2006. The Applicants were represented by Ms M. Gordon the lessee of 16 Joseph Court and Mrs Vera Carpenter of the Hackney Right to Buy Association. Ms Gordon gave evidence as a witness of fact and Mr Martyn Gibbons FRICS McPS gave evidence for the Applicants as an expert witness. Ms Bogan, Mr Goldwater, Mr and Mrs Isaac Saul, Mr Jefcoate and Dr Garboggini were also present at the hearing. Mr P. Miller of Counsel represented the Respondent instructed by Ms Tsiga of Hackney Council Legal Department. Mr Richard Wiles, principal surveyor employed by the Respondent, Ms Madeleine Mezmin, team leader employed by the Respondent and Mr A.O Sobowale, architect and expert witness, gave evidence on behalf of the Respondent. Ms J. Morrison, major works manager employed by the Respondent and Ms S. Moore, major works team leader employed by the Respondent were both in attendance at the hearing.

INSPECTION

4. The Tribunal was invited to inspect Joseph Court by the Respondent but we did not do so as this was a case about historic neglect. All the major works the cost of which were in dispute had been completed in 2001 and the quality of the works was not in dispute and therefore we could see no reason to carry out an inspection.

PRELIMINARIES

5. Joseph Court is made up of two blocks of flats, Block 1 (11 storeys) consists of Flats 1 to 60 and Block 2 (6/7 storeys) consists of Flats 61 to 102. Four of the lessees live in Block 1 and the other four live in Block 2. The application relates to the costs of major works involved in the refurbishment of both blocks by the Respondent in 2000 and 2001. Out of the total of 102 flats, 26 are owned by long leaseholders and out of those eight have made this application. The flats which have not been bought are let on secure tenancies by the Respondent.

6. The lessor in respect of all the leases, which were granted under the Right to Buy legislation, is the Mayor and Burgesses of the London Borough of Hackney. The details of the leases are as follows:

(1) <u>75 Joseph Court</u>
Date of lease: 28th November 1988

Term: 28th November 1988 to 27th November 2113
Lessee: Howley (assigned to Adeyeni)

(2) 79 Joseph Court
Date of lease: 2nd January 1989
Term: 2nd January 1989 to 24th August 2111
Lessee: Jefcoate

(3) 15 Joseph Court
Date of lease: 3rd December 1990
Term: 3rd December 1990 to 13th May 2115
Lessee: Bogan

(4) 16 Joseph Court
Date of lease: 17th December 1990
Term: 17th December 1990 to 13th May 2115
Lessee: Gordon

(5) 54 Joseph Court
Date of lease: 9th December 1990
Term: 9th December 1990 to 13th May 2115
Lessee: Isaac Saul

(6) 40 Joseph Court
Date of lease: 24th February 1990
Term: 24th February 1990 to 13th May 2115
Lessee: Goldwater

(7) 65 Joseph Court
Date of lease: 10th August 1992
Term: 10th August 1992 to 27th November 2113
Lessee: Choi (assigned to Garboggini)

(8) 69 Joseph Court
Date of lease: 29th March 1993
Term: 29th March 1993 to 27th November 2113
Lessee: Anthony

7. The Tribunal was provided with copies of the eight leases which are in substantially the same form. The variation to which the Tribunal's attention was drawn was that the leases for 75 and 79 Joseph Court do not include the words "including works of improvement" at the end of paragraph 6 of the Ninth Schedule (the lessor's covenants to be observed by the lessor at the lessee's expense).

8. In August 2000 major refurbishment works were commenced at Joseph Court and these were completed in July 2001. The Tribunal was not provided with a copy of the specification of works. The Applicants were challenging part of the costs of these major works.

MATTERS IN DISPUTE

9 (1) Complete replacement of existing Critall windows and private balcony doors with uPVC windows and doors. The Critall windows were the original windows which had been installed when the blocks were built in or about 1961. The sum challenged on the ground of historic neglect is £396,723.

(2) Insulation included in cost of flat roof replacement. The sum challenged is £20,738.

(3) Cavity wall insulation. The sum challenged is £123,223.

(4) Future legal costs to be charged to the service charge in respect of preparation for and attendance at the Leasehold Valuation Tribunal.

AGREED MATTERS

10. Mr Gibbons and met Mr Sobowale held a meeting on 3rd April 2006 and prepared a list of agreed matters which can be summarised as follows:

(1) the Joseph Court Tenants and Residents Association have alleged that Joseph Court has been the subject of constant neglect between the years of 1983 and 2000.

(2) The exterior decorations were renewed in 1984 together with some localised associated timber repairs.

(3) In 1988 the London Borough of Hackney's repair policy was controlled by a new prioritisation exercise identifying which schemes should proceed. This exercise identified seven criteria which are set out at pages 2 and 3 of the report of Mr Sobowale.

(4) A window survey was carried out in 1992 by the Classic Design Partnership which concluded it would be cost effective to carry out window repairs prior to the external redecorations of the blocks. Also in 1993 a memo from the neighbourhood personnel confirmed windows could be repaired before redecoration.

(5) In 1994 a stock condition survey was carried out on the borough as a whole. This determined that some of the windows at Joseph Court needed repair and some needed replacement.

NOTICES UNDER SECTION 20 OF THE ACT

11. The Applicants accepted that valid section 20 notices were served in June 2000 in respect of the works which were the subject of this application.

SECTION 125 HOUSING ACT 1985

12. The Tribunal was provided with copies of all the section 125 notices of the leases of the eight Applicants. The initial period, being five years from the date of the lease, during which the landlord cannot recover more than the estimated service charges or improvement contributions, with an allowance made for inflation, had expired in respect of all these leases before the section 20 notices were served in June 2000.

PAYABILITY AND REASONABLENESS OF THE SERVICE CHARGES IN DISPUTE

13. The Applicants accepted that the works which had been carried out and which were the subject of this dispute were of a reasonable standard. The arguments which were put forward by the Applicants were in respect of the amount which was payable and whether the costs should be limited taking into account the extent to which they had been reasonably incurred.

THE LEASE

14 (1) Clause 3 of the lease is the charging clause for service charges and requires the lessee to pay such costs as are incurred by the lessor in carrying out the obligations or functions contained in or referred to in clauses 3, 6 and 8 and in the covenant set out in the Ninth Schedule.

(2) The lessor covenants to perform the covenants as set out in the Ninth Schedule.

(3) Clause 8 sets out the lessor's management responsibilities and the matters for which it is entitled to charge.

(4) Clause 11 provides that disputes in respect of the lease shall be referred to arbitration.

(5) The First Schedule describes the estate.

(6) The Second Schedule describes the block.

(7) The Third Schedule describes the reserved property.

(8) The Fourth Schedule describes the demised premises.

(9) The Seventh Schedule sets out the covenants on the part of the lessee.

(10) The Ninth Schedule sets out the lessor's covenants, paragraph 6 of the Ninth Schedule being different in respect of the leases of Flats 75 and 79 as noted in paragraph 7 above.

MAJOR WORKS

Roof Insulation

Evidence and Submissions of the Applicants

15 Mr Gibbons stated in his report that part of the comprehensive package of works was a new insulated roof to Block 1, Flats 1 to 60 Joseph Court and Block 2, 61 to 102 Joseph Court. He submitted on behalf of the Applicants that the proportion included in the cost of these replacement roofs for insulation should be deducted. He said he did not have exact cost details but he estimated for budget purposes an allowance of 15% of the roofing cost which he calculated to be £20,738. Mr Gibbons argued that there was no liability under the lease to pay for roof insulation. It was his case that paragraph 6 of the Ninth Schedule even where it referred to improvements did not cover roof insulation because it was not necessary for the "proper maintenance and management" of the block or estate.

Evidence and Submissions of the Respondent

16 Mr Sobowale explained in his report the reason for including roof insulation and explained that the 1998 feasibility study for the block had shown a significant heat loss through the exposed roof and he explained that the scheme for upgrading the block had included roof renewal and insulation works in order to bring the block up to modern day standards. Mr Miller submitted that at the every least the roof insulation was an improvement but that in his submission the works were repairs within the meaning of the lease because there was previously insulation in the roof albeit minimal. He referred to a précis of the feasibility report at page 588 of the bundle which stated in relation to the roof "there is a very limited amount of thermal insulation, hence heat loss is high and a completely new roof is recommended for both blocks".

Decision

17 In the absence of any evidence to the contrary we accept that there was some form of insulation present before these roofs were replaced. In general we accept that the roof boarding would have included insulation. The Ninth Schedule of the lease provides for the lessor

> 1. "To keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts).
>
> (i) the main structure of the Block including all foundations forming part of the Block all exterior and all party walls and structures and all walls dividing the flat from any other flat or from the common halls staircases landings steps and passages in the Block and the walls bounding the same and all electrical and other fitting and windows in the Block (but excluding the internal plaster and windows and electrical and other fittings inside any individual flat for which the owner thereof is

responsible under any provisions in his Lease corresponding to paragraph 5 of the Seventh Schedule hereto) and all doors therein save such doors that give access to individual flats and including all roofs and chimneys in every part of the property above the level of the top floor ceilings."

In our view the Respondent, in insulating the roofs at the same time as replacing them was following current good practice and that this work comes within the lessor's covenants in paragraph 1 of the Ninth Schedule and therefore the lessees are liable to pay for this work under clause 3 of the lease. There was no challenge to the amount payable as it was accepted by the Applicants that the works were of a reasonable standard.

Cavity Wall Insulation

18. Both parties agreed that this work was an improvement to the building and that if the Council could charge, it could only charge for this work under paragraph 6 of the Ninth Schedule which sets out the lessor's covenant "to carry out all such other works in respect of the Block or the Estate as are in the reasonable opinion of the Lessor necessary for its proper maintenance and management including works of improvement". However as the words "including works of improvement" were not included in the leases of Flats 75 and 79 then the Respondent conceded that these works could not be charged to the lessees of these flats.

Evidence and Submissions of the Applicants

19 Mr Gibbons submitted that cavity wall insulation was not necessary for the "proper maintenance and management" of the block or the estate and therefore the Applicants were not liable for the cost of this work as the service charge could not be imposed for this work under the terms of the lease. He confirmed there was no challenge to the standard of the work or the actual cost.

Evidence and Submissions of the Respondent

20. Mr Sobowale pointed out in his report that the feasibility study had recommended as a top priority a number of works including cavity wall insulation. This is a modern day requirement when considering energy efficiency. Mr Miller submitted that this work must come within the ambit of paragraph 6 of the Ninth Schedule it being necessary in the reasonable opinion of the lessor for the proper maintenance and management including works of improvement of the block and estate.

Decision

21. In our view the Respondent is entitled to charge the lessees (excluding Flats 75 and 79) for the cost of cavity wall insulation under paragraph 6 of the Ninth Schedule of the lease. The feasibility study recommended these works as it was good practice when carrying out major works to install cavity wall insulation to bring this block up to modern day standards. The Applicants' submission that this work was not necessary for the "proper maintenance and management" of the blocks cannot be supported. We did not consider reasonableness under section 19 of the Act as

improvements carried out prior to 30th September 2003 do not come within our jurisdiction (Commonhold and Leasehold Reform Act 2002, section 150, Schedule 9, paragraph 7).

Window Replacement

22. During the major works all the windows in both blocks, including in all the flats and the common parts, and the private balcony doors, were replaced. The original windows installed when the blocks were built in the early 1960s were Critall windows and these were replaced with uPVC windows and balcony doors. After careful reconsideration of the lease and an indication from the Tribunal, the Respondent accepted that the definition of the demised premises in the Fourth Schedule of the lease included "the doors and door frames". This was enforced by reference to the covenants of the lessee in paragraph 5 of the Seventh Schedule of the lease which required the lessee "to keep in good and substantial repair and condition . . . . all doors and door frames". In his submissions Mr Miller conceded that it appeared that the doors were part of the demised premises but said that he would leave this as a matter for the Tribunal decide.

Evidence and Submissions of the Applicants

23. The main plank of the Applicants' case was historic neglect which applied in particular to the windows. The Applicants Statement of Case set out a chronology of what they described as the constant neglect to Joseph Court which had taken place between 1983 and 2000. The Applicants submitted that there had been no attempt by the Respondent to comply with its obligations under their leases, that there had been no co-ordinated planned maintenance programme, there had been numerous surveys the results of which had been ignored and that the lack of exterior painting between 1984 and 2000 had played a significant role in the deterioration of the windows. The Applicants' case was that Critall windows, if properly maintained, could last for at least 50 years and probably 70 years and instead of paying a reasonable sum for five-yearly maintenance and painting of these windows the lessees had been asked to pay a substantial sum for replacement of the windows. Mr Gibbons in his report set out the cost of maintaining windows/doors and screens over the period of neglect as against replacement. It was his opinion that the increased costs, which he calculated to be £396,723 were avoidable. Mr Gibbons set out his estimated costs for repair and redecoration of the windows in 1989, 1994 and 1999.

Evidence and Submissions of the Respondent

24. The Respondent accepted, as set out in the agreed statement of Mr Gibbons and Mr Sobowale, that prior to the major works in 2000/2001 there had been no significant repairs and exterior decorations carried out since 1984. Paragraph 1 of the Ninth Schedule sets out the Respondent's obligations regarding the main structure of the block including the windows and Mr Sobowale, at paragraph 33 of his witness statement, states that "the Council's long established external painting and repairs programme had been based on maintaining blocks on a five-year cycle". However he admitted that due to financial constraints it had not been possible to maintain this target in recent times. He went on to submit that if the windows had been painted on a five-yearly cycle and then the windows had been replaced (which in his view was

what was really needed in Joseph Court), then there would have been a challenge because the leaseholders would have been charged effectively "twice". Mr Sobowale submitted that these windows would need replacing in the next ten or fifteen years in any event and that in his view because of the inherent defects the windows needed to be replaced and that this was in compliance with the Respondent's covenants in the lease. Although there had been a number of reports in relation to Joseph Court, the most recent had recommended wholesale replacement of the windows and balcony doors because of defect in the brick slips, poor thermal insulation and heat loss and the expense of stripping off paint from these windows. In the event the lessees had not been charged for worthless painting when the windows would in any event have had to be replaced. Mr Miller submitted that the new windows would mean less maintenance, less repairs and less costs in the future, and that the Council had acted expediently and in the best interests of the lessees. Mr Miller submitted that the replacement of the windows was a repair within the meaning of the lease. He challenged Mr Gibbons' calculations which he submitted were unsafe to rely on as Mr Gibbons could not explain the figures which he had used for his calculations.

Decision

25. We considered carefully the documentation which had been submitted to us in relation to the historic neglect of Joseph Court and the ultimate replacement of the windows. In the period from 1984 until the major works in 2000 the Council failed to comply with their contractual obligations but instead commissioned reports of dubious quality and then failed to act on these reports. (For example, the report carried out prior to the major works failed to identify the problem with the brick slips or the lower flat roof which resulted in the new roof having to be installed). The leases require the lessor to keep in good and substantial repair and condition the main structure of the block and the Respondent's expert witness gave evidence that the Council's external painting and repairs programme had been based on a five-year cycle. The windows were installed when the blocks were built in 1961 and we accept that in principle Critall windows can in some circumstances last for up to 70 years although this depends on their quality. A number of reports have been prepared over the years and no evidence in these reports had been produced of significant or extensive rusting. We can assume therefore that if there had been proper and reasonable cyclical repairs and maintenance in 1989 and 1994 the windows would, by the next cycle in 1999, have been in reasonable condition.

26. When considering whether the lessees had been penalised financially by the historic neglect, it is not reasonable to assume that repairs and decoration would have been carried out in 1999. A feasibility study was carried out in 1998 when the condition of the block including the windows was assessed. By this time in order to comply with Government guidance, the Respondent was obliged to consider the insulation requirements of Joseph Court. The benefit of renewal would be to improve insulation and to reduce the cost of future maintenance. By 1999 the windows were likely to have still been in a condition in which they could be repaired and decorated although this would have continued to be necessary on a five-yearly cycle. The assessment for the Respondent was to decide whether to continue to repair and redecorate or as a prudent landlord, taking into account current building regulations and Government requirements to renew and replace the windows as part of the major works strategy.

27. On balance we consider that by 1999 a responsible landlord, having considered current building requirements, the cost of scaffolding for the whole building and the ongoing maintenance costs of the original windows, would decide to replace the windows. The evidence is that by 2000 renewal of these windows would come within paragraph 1 of the Ninth Schedule of the lease i.e. "to keep in good substantial repair and condition (and wherever necessary rebuild reinstate and renew and replace all worn or damaged parts) of the main structure including the windows". Alternatively renewal of the windows would come within paragraph 6 of the Ninth Schedule "to carry out all such other works in respect of the block or the estate as are in the reasonable opinion of the lessor necessary for its proper maintenance and management".

28. We then went on to consider whether the Respondent's neglect of the block which had undoubtedly taken place had resulted in financial loss to the lessees. We concluded it had not because even if the Respondent had carried out its obligations under the lease in 1989 and 1994 (which only applies to the lessees of Flats 75 and 79), by the next cycle in 1999 consideration would have been given to renewing the windows and indeed they would have been renewed. The lessees had not had to pay the cost of scaffolding and exterior decorations between 1989 and 2000 nor had they had to borrow money to pay for these service charges and over the period that these lessees have owned their leases they have saved money because the Respondent failed to comply with its covenants under the lease. In addition the lessees have already saved the costs of maintenance and decoration in 2004 and will continue to do so in the future. The lessees made numerous complaints about the Respondent's failure to comply with the lease but the lessees did not make an application to the county court for an injunction forcing the Respondent to carry out its obligations nor did the lessees avail themselves of their right to go to arbitration.

29. We fully accept the lessees' arguments about historic neglect save for their arguments on financial grounds. It is our finding that the costs of the new windows had been reasonably incurred. The lessees had made no challenge on the quality or standard of the works.

30. However it is our decision that the patio doors which had been replaced by the Council, are not part of the block or estate as defined in the lease and are a part of the demised premises as set out in the Fourth Schedule of the lease. In those circumstances the Respondent is not entitled to charge the lessees for the cost of the patio doors as this does not come within the definition of clause 3, the charging clause, of the lease.

FUTURE SERVICE CHARGES FOR LEGAL COSTS

31 The Respondent had indicated to the lessees that it intended to place the costs of preparation for and attendance at the Leasehold Valuation Tribunal on the service charge. The Applicants requested a determination as to whether this service charge would be payable. The dispute centred on the interpretation of clause 8(A) of the lease, the relevant part of which reads,

"that the Lessor shall at all times during the term hereby granted manage the Estate and the Block in a proper and reasonable manner. The Lessor shall be entitled ....

(ii) to employ architects surveyors solicitors accountants contractors builders gardeners and any other person or firm or company properly required to be employed in connection with or for the purpose of or in relation to the Estate and the Block or any part thereof and to pay them all proper fees charges salaries wages costs expenses and outgoings."

Decision

32. The Respondent is only entitled to recover legal costs under the service charge where there is clear provision for doing so under the lease. In our view in the leases which are the subject of this application the lessor has clearly made provision to enable it to recover the costs of management. Taking a common sense approach the definition of management includes the raising of and collecting service charges which is part of the landlord's duty and obligations under the lease. Where service charges remain unpaid or are disputed it is part of a landlord's management responsibility where necessary to prepare for and appear at a Leasehold Valuation Tribunal hearing. It is our finding that the Respondent is entitled to add the costs of preparing for and appearing at this hearing to the service charge. However the Applicants are, of course, entitled to make an application for a determination in respect of reasonableness to the Leasehold Valuation Tribunal when they have received the relevant invoice.

APPLICATION UNDER SECTION 20C OF THE ACT

33. Section 20C – Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made

(a) .....

(b) in the case of proceedings before a Leasehold Valuation Tribunal to the Tribunal before which the proceedings are taking place or if the application is made after the proceedings have concluded to a Leasehold Valuation Tribunal.

(c) .....

(3) The Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Evidence and Submissions of the Applicants

34. The Applicants made an application for an order that all or any of the costs incurred by the landlord in connection with these proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. The basis of the application was that the Council had failed to address in a timely fashion the disrepair at Joseph Court. The Council had failed to recognise the condition of the block and the argument that costs had been saved did not address the question of breach of the terms of the leases. The Applicants had been forced to incur professional costs as when it had become impossible to resolve this dispute the only option open to the lessees was to apply to the Leasehold Valuation Tribunal. If the Council had complied with the lease then the application would not have been necessary.

Evidence and Submissions of the Respondent

35. Mr Miller referred to the letter from the Respondent to the lessees' solicitors dated 31st May 2002 (to be found at page 278 of the bundle). He said the Council had sought to have this matter referred to arbitration as provided in the lease but the lessees were against this. Subsequently the Council agreed to go to the Leasehold Valuation Tribunal although they did not make an application themselves. It was the Applicants' wish and decision to apply to the Leasehold Valuation Tribunal and Mr Miller submitted there was no reason why an order under section 20C should be made.

Decision

36. The Tribunal's jurisdiction under this application is to make such order "as it considers just and equitable in the circumstances". Having carefully reviewed this case, read approximately 1,300 pages of documentation and listened to evidence and submissions for two days, we concluded that the Applicants were intransigent and determined that this case should come before the Leasehold Valuation Tribunal. Unfortunately their concern that the Respondent was in breach of its obligations under the lease had clouded their judgement. In fact, as can be seen from our decision and our reasons for that decision, the Applicants have benefited financially from the historic neglect which has taken place at Joseph Court. The Respondent, under the terms of the lease which was freely entered into by the Applicants, was entitled to refer this matter to arbitration but the Applicants refused to consent to this. The Applicants insisted on an application to the Leasehold Valuation Tribunal and, with the exception of a point raised by the Tribunal rather than the Applicants, have not been successful in their application. In those circumstances we can see no reason why it is just and equitable to make an order under section 20C.

REIMBURSEMENT OF FEES

37. Paragraph 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 states "a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him in respect of the proceedings".

38. The Tribunal was informed that the Applicants had paid a total of £500 in fees to the Leasehold Valuation Tribunal. They asked that this sum should be paid by the Respondent because they had been trying to resolve this dispute for a long time and had been forced to come to the Leasehold Valuation Tribunal because of the London Borough of Hackney's inaction. The Respondent's case was that it had been willing to go to arbitration and the lessees had chosen not to take up this offer and the lessees had chosen to make the application to the Leasehold Valuation Tribunal.

Decision

39. We were not persuaded that we should make an order for reimbursement of the fees for the same reasons as set out in paragraph 36 above.

Jane Dowell
Chairman

Dated the 2 day of May 2006