

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOHA/LSC/2006/0125

REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicants: Dr Mahinda Deegalle (Flat 4), and Mrs Constance Martin (Flat 1)

Respondents : Mrs Rita Heath (freeholder), Mr Robert G L Heath (Flat 2), Ms Gill R Lawther (Flat 3), and Mr Andrew Kingston (Flat 5)

Building : 133 Wells Road, Bath, BA2 3AN

Flats : The residential Flats in the Building

Date of Application : 27 November 2006

Date of Directions : 29 November 2006, and 8 January 2007

Date of Hearing : 13 February 2007

Venue of Hearing : The Pump Rooms, Stall Street, Bath

Attendances for the Applicants : Dr Deegalle

Attendances for the Respondents : Mr Paul Heath (representing Mrs Heath, Landlord, and Mr R Heath Flat 2), Ms Lawther, and Mr Kingston

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr S Hodges FRICS, and Mr M R Cook JP

Date of Tribunal’s Reasons : 20 February 2007

Introduction

1. This Application by the Applicants is under section 27A of the 1985 Act
2. The Applicants have also made an application under section 20C of the 1985 Act for an order that the costs incurred by Mrs Heath are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants
3. On the 29 November 2006 and the 8 January 2007 the Tribunal gave directions
4. The hearing of the application took place on the 13 February 2007
5. Section 18 of the 1985 Act provides :

Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "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 purposes—

(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.[...]

6. Section 19(1) of the 1985 Act provides as follows :

(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

7. The definition of "service charge" for the purposes of the 1985 Act has been extended by paragraph 7 of Schedule 9 to the Commonhold and Leasehold Reform Act 2002 ("CLARA 2002") to mean an amount payable not only for services, repairs, maintenance, or insurance or the landlord's costs of management, but also now for improvements. The Tribunal's jurisdiction

to consider the payability of a service charge applies whether or not any payment has been made (section 27A(2) of the 1985 Act), and whether or not the works have been carried out (section 27A(3) of the 1985 Act)

8. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either---

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement---

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount---

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

9. The material parts of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to... the association.

(2) The notice shall-

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify-

- (i) the address to which such observations may be sent;*
- (ii) that they must be delivered within the relevant period;*

and

(iii) the date on which the relevant period ends.

Para 11

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons;
or

(c) in any other case, from any nominated person.

- (4) *Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-*
- (a) *from at least one person nominated by a tenant; and*
 - (b) *from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).*
- (5) *The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*
- (a) *obtain estimates for the carrying out of the proposed works;*
 - (b) *supply, free of charge, a statement ("the paragraph (b) statement") setting out-*
 - (i) *as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*
 - (ii) *where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*
 - (c) *make all of the estimates available for inspection.*
- (10) *The landlord shall, by notice in writing to each tenant and the association (if any)-*
- (a) *specify the place and hours at which the estimates may be inspected;*
 - (b) *invite the making, in writing, of observations in relation to those estimates;*
 - (c) *specify-*
 - (i) *the address to which such observations may be sent;*
 - (ii) *that they must be delivered within the relevant period; and*
 - (iii) *the date on which the relevant period ends.*

Documents

10. The documents before the Tribunal are :

- a. the application and supporting documents comprising pages 1 to 36 in the Tribunal's bundle
- b. the statement of Mr Paul Heath dated the 2 January 2007 and supporting documents numbered 1 to 43 (which the Tribunal will refer to in these reasons as PH1 to PH43)
- c. the statement by Ms Lawther dated the 29 December 2006
- d. the statement by Dr Deegalle dated the 29 January 2007 and supporting documents numbered MD1 to MD21

Inspection

11. The Tribunal inspected the Building on the morning of the hearing on the 13 February 2007. Also present throughout the inspection were Mr Paul Heath and Mr Kingston. Dr Deegalle was present throughout, except during the inspection of Flat 3. Ms Lawther was present throughout, except during the inspection of Flat 4. Mrs Martin was present when the Tribunal arrived, but took no part in the inspection, as such

12. The Building was a 2-storey building of natural Bath-stone construction, with slate roofs. There was a single bay at the front, to the left of the communal front door to Flats 1 to 4. Flat 5 was a single-storey flat-roofed annex on the right, with its own entrance.
13. Flat 1 was on the ground floor on the left. Flat 2 was on the ground floor on the right. Flat 3 was on the first floor at the rear. Flat 4 was on the first floor at the front
14. The Building appeared to be generally in fair condition, but the curved wall on the left of the garden steps was in poor condition. The tarmac path round the base of the Building was in poor condition
15. In the lobby immediately inside the front door was a meter cupboard. There was a water stop-cock amongst the meters. The decorative condition of the lobby and hallway beyond was tired
16. The party wall between the lounge of Flat 4 and a bedroom of Flat 3 was a stud partition wall. The parties told the Tribunal that it was resting only on floorboards, and not on either joists or the structural wall of Flat 2 beneath
17. There was a narrow staircase from Flat 3 to the roof space above Flats 3 and 4. There was evidence of localised wet rot to the rafters near the chimney at the front. There was an inadequate purlin support at the rear

Lease of Flat 1 (PH1)

18. For the purposes of these proceedings the material parts of the Lease of Flat 1 are as follows :

Recital 1

The Lessor is now seised in fee simple in possession free from incumbrances of the property consisting of five flats and garden ground known as 133 Wells Road Bath (hereinafter called "the house")

Clause 1

..... the Lessor [demises Flat 1]... and being on the ground floor including one half part in depth of the joists between the ceilings of the flat and the floors of the flat above it and (subject to clause 5(1) hereof) the internal and external walls up to the same level and the land and structure of the building below the Flat including the foundations supporting the internal and external walls... .. [and] the garden borders shown coloured red on the attached plan

Clause 2

The Lessee hereby covenants with the Lessor and with the owners and lessees of

the other flats in the house [to] observe and perform the restrictions and obligations [in] the First Schedule hereto

Clause 3

The Lessor hereby covenants with the Lessee as follows :

(a)

(b) that the Lessor will require every person to whom shall hereafter grant a Lease of any flat in the house to covenant to observe and perform similar restrictions and obligations to those set forth in the First Schedule hereto being those applicable to the particular flat and will enforce such covenants and any covenants already given and as to such parts of the house as have not been demised subject to such covenants the Lessor hereby covenants that she will herself observe such covenants

Clause 5

It is hereby declared as follows

(1)

(2)

(3) If there shall be any disagreement between the Lessee and the Lessor and/or the owners and lessees for the time being of the other flats in the building as to whether any of the works referred to in clauses 17 and 18 [sic] of the First Schedule hereto are necessary or desirable or as to the arrangements to be made for carrying out those works then so long as the present Lessor shall be the freeholder or occupier of any of the flats the decision of the Lessor shall be final and binding upon the Lessee but after the Lessor shall cease to be the Freeholder or occupier of any of the flats the matter shall be decided by an independent surveyor to be nominated by the persons liable to contribute to the expense of such works (and in default of agreement to be nominated by the president of the Royal Institute of Chartered Surveyors) whose decision shall be final and whose fees shall be borne by such persons in equal shares

First Schedule

7. At all reasonable times during the said term on notice to permit the Lessor and her Lessees with workmen and others to enter into and upon the demised premises or any part thereof for the purpose of repairing any adjoining or contiguous premises and for the purpose of making repair maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables gutters wires party structures or other conveniences belonging to or serving or used for the same and also for the purpose of laying down maintaining repairing and testing drainage and gas and water pipes and electric wires and cables and for similar purposes the Lessor or her Lessees making good all damage occasioned thereby to the demised premises

8. *The Lessee shall... .. keep the demised premises... .. in a good and tenatable state of repair and condition*

11. *The Lessor may with or without workmen and others at reasonable times enter upon and examine the condition of the demised premises and may thereupon serve on the Lessee notice in writing specifying any works or repairs necessary to be done for which the Lessee is liable hereunder and require the Lessee forthwith to execute the same and if the Lessee does not within two months after the service of such notice proceed diligently with the execution of such repairs or works then the Lessor may enter upon the demised premises and execute the same and the cost thereof shall be a debt due from the Lessee to the Lessor and shall be recoverable forthwith by action*

16(i) *To pay one forth [sic] share of the cost of maintaining repairing redecorating and renewing*

(a) *the main structure and in particular the roof and chimney stacks*

(b) *the gutters and rainwater pipes of the house and*

(c) *the main entrances passages landings and staircases of the house*

(ii) *To pay a one fourth share of the cost of cleaning and lighting the passages landings and staircases of the house*

all [parts mentioned in (i) and (ii)] being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of the other three flats forming the main part of the house but excluding Flat number 5

17 *To pay a one fifth share of the cost of maintaining repairing redecorating and renewing*

(a) *the gas and water pipes drains and electricity cables and wires in under or upon the house other than those serving exclusively the Flat or serving exclusively any other flat*

(b) *the front boundary wall abutting on Wells Road and*

(c) *the front gate front steps and the footpath leading to the main entrances of the house and the footpath leading around the house all being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of all other flats in the house including Flat number 5*

Lease of Flat 2 (PH2)

19. For the purposes of these proceedings the material parts of the Lease of Flat 2 are as follows :

Recital 1

The Lessor is now seised in fee simple in possession free from incumbrances of the property consisting of five flats and garden ground known as 133 Wells Road Bath (hereinafter called "the house")

Clause 1

... the Lessor [demises Flat 2] and being on the ground floor including the hallway and passage between the main entrance and the rear entrance of the house ... and including one half part in depth of the joists between the ceilings of the Flat and the floors of the Flat above it and (subject to clause 5(1) hereof) the internal and external walls up to the same level and the land and structure of the building below the Flat including the foundations supporting the internal and external walls [and] the garden border outside the Flat shown on the plan annexed hereto and thereon coloured pink [and] the coal shed numbered 2 and coloured pink on the said plan ...

Clause 2

The Lessee hereby covenants with the Lessor and with the owners and lessees of the other flats in the house [to] observe and perform the restrictions and obligations [in] the First Schedule hereto

Clause 3

The Lessor hereby covenants with the Lessee as follows :

(a) ...

(b) that the Lessor will require every person to whom shall hereafter grant a Lease of any flat in the house to covenant to observe and perform similar restrictions and obligations to those set forth in the First Schedule hereto being those applicable to the particular flat and will enforce such covenants and as to such parts of the house as have not been demised subject to such covenants already given the Lessor hereby covenants that she will herself observe such covenants

Clause 5

It is hereby declared as follows

(1) ...

(2) ...

(3) If there shall be any disagreement between the Lessee and the Lessor and/or the owners and lessees for the time being of the other flats in the building as to whether any of the works referred to in clauses 17 and 18 of the First Schedule hereto are necessary or desirable or as to the arrangements to be made for carrying out those works then so long as the present Lessor shall be the freeholder or occupier of any of the flats the decision of the Lessor shall be final and binding upon the Lessee but after the Lessor shall cease to be the Freeholder or occupier of any of the flats the matter shall be decided by an independent surveyor to be nominated by the persons liable to contribute to the expense of such works (and in default of agreement to be nominated by the president of the Royal Institute of Chartered Surveyors) whose decision shall be final and whose fees shall be borne by such persons in equal shares

First Schedule

7. *At all reasonable times during the said term on notice to permit the Lessor and her Lessees with workmen and others to enter into and upon the demised premises or any part thereof for the purpose of repairing any adjoining or contiguous premises and for the purpose of making repair maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables gutters wires party structures or other conveniences belonging to or serving or used for the same and also for the purpose of laying down maintaining repairing and testing drainage and gas and water pipes and electric wires and cables and for similar purposes the Lessor or her Lessees making good all damage occasioned thereby to the demised premises*

8. *The Lessee shall... .. keep the demised premises... .. in a good and tenantable state of repair and condition*

11 *The Lessor may with or without workmen and others at reasonable times enter upon and examine the condition of the demised premises and may thereupon serve on the Lessee notice in writing specifying any works or repairs necessary to be done for which the Lessee is liable hereunder and require the Lessee forthwith to execute the same and if the Lessee does not within two months after the service of such notice proceed diligently with the execution of such repairs or works then the Lessor may enter upon the demised premises and execute the same and the cost thereof shall be a debt due from the Lessee to the Lessor and shall be recoverable forthwith by action*

17(i) *To pay a one fourth share of the cost of maintaining repairing redecorating and renewing*

(d) the main structure and in particular the roof and chimney stacks and the foundations internal and external of the house

(e) the gutters and rain water pipes of the house and

(f) the main entrances hallways passages landings and staircases of the house

(ii) To pay a one fourth share of the cost of cleaning and lighting the passages landings and staircases of the house

all [parts mentioned in (i) and (ii)] being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of the other three flats forming the main part of the house but excluding Flat No. 5

18 *To pay a one fifth share of the cost of maintaining repairing redecorating and renewing*

(a) the gas and water pipes drains and electricity cables and wires in under or upon the house other than those serving exclusively the demised premises or serving exclusively any other flat

(b) the front boundary wall abutting on Wells Road and

(c) the front gate front steps and the footpath leading to the main entrances of the house and the footpath leading around the house all being parts of the house

enjoyed or used by the Lessee in common with the owners and lessees of all other flats in the house including Flat No. 5

20. A supplementary deed (PH2) made alterations to the lease, including the inclusion of *the small garden border at the rear of the property alongside the Fuel Store belonging to Flat 2 in the property demised as Flat 2 and the plan coloured pink*, and the inclusion of clause 5(3), but did not otherwise alter the quoted provisions

Lease of Flat 3 (Tribunal's bundle pages 12 to 21)

21. For the purposes of these proceedings the material parts of the Lease of Flat 3 are as follows :

Recital 1

The Lessor is now seised in fee simple in possession free from incumbrances of the property consisting of five flats and garden ground known as 133 Wells Road Bath (hereinafter called "the house")

Clause 1

... .. the Lessor [demises Flat 3] being on the first floor including the inside staircase and that part of the landing leading to the flat from the ground floor of the house including also the roof void above the flat and above Flat No. 4... .. and including one half part in depth of the joists between the floors of the flat and the ceilings of the flat below it and (subject to clause 5(1) hereof) the internal and external walls above the same level... .. and the roof of the house and the one chimney stack so far as the same constitutes the roof of the flat... .. [and] the garden the situation of which is shown on the plan annexed hereto and thereon coloured pink [and] the coal shed numbered 3 and coloured pink on the said plan [and] the three steel stanchions supporting the outer face of the rear addition to the flat

Clause 2

The Lessee hereby covenants with the Lessor and with the owners and lessees of the other flats in the house [to] observe and perform the restrictions and obligations [in] the First Schedule hereto

Clause 3

The Lessor hereby covenants with the Lessee as follows :

(a)

(b) that the Lessor will require every person to whom shall hereafter grant a Lease of any flat in the house to covenant to observe and perform similar restrictions and obligations to those set forth in the First Schedule hereto being those applicable to the particular flat and will enforce such covenants and as to

such parts of the house as have not been demised subject to such covenants the Lessor hereby covenants that she will herself observe such covenants

Clause 5

It is hereby declared as follows

(1) That every internal wall separating the flat from any adjoining flat shall be a party wall severed medially and shall be included in the premises hereby demised as far only as the medial plane thereof

(2).....

(3) If there shall be any disagreement between the Lessee and the Lessor and/or the owners and lessees for the time being of the other flats in the building as to whether any of the works referred to in clauses 17 and 18 of the First Schedule hereto are necessary or desirable or as to the arrangements to be made for carrying out those works then so long as the present Lessor shall be the freeholder or occupier of any of the flats the decision of the Lessor shall be final and binding upon the Lessee but after the Lessor shall cease to be the Freeholder or occupier of any of the flats the matter shall be decided by an independent surveyor to be nominated by the persons liable to contribute to the expense of such works (and in default of agreement to be nominated by the president of the Royal Institute of Chartered Surveyors) whose decision shall be final and whose fees shall be borne by such persons in equal shares

First Schedule

7. *At all reasonable times during the said term on notice to permit the Lessor and her Lessees with workmen and others to enter into and upon the demised premises or any part thereof for the purpose of repairing any adjoining or contiguous premises and for the purpose of making repair maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables gutters wires party structures or other conveniences belonging to or serving or used for the same and also for the purpose of laying down maintaining repairing and testing drainage and gas and water pipes and electric wires and cables and for similar purposes the Lessor or her Lessees making good all damage occasioned thereby to the demised premises*

8. *The Lessee shall..... keep the demised premises..... in a good and tenatable state of repair and condition*

11 *The Lessor may with or without workmen and others at reasonable times enter upon and examine the condition of the demised premises and may thereupon serve on the Lessee notice in writing specifying any works or repairs necessary to be done for which the Lessee is liable hereunder and require the Lessee forthwith to execute the same and if the Lessee does not within two months after the service of such notice proceed diligently with the execution of such repairs or works then the Lessor may enter upon the demised premises and execute the same and the cost thereof shall be a debt due from the Lessee to the Lessor and shall be*

recoverable forthwith by action

16 *To maintain in efficient working order sufficient electric light of not less than 60w on the landing outside the flat and in the hallway for the benefit of persons using the building... ..*

17(i) *To pay a one fourth share of the cost of maintaining repairing redecorating and renewing such of the following as do not form part of the flat*
(g) *the main structure and in particular the roof and chimney stacks and the foundations internal and external of the house*
(h) *the gutters and rain water pipes of the house and*
(i) *the main entrances passages landings and staircases of the house*
(ii) *To pay a one fourth share of the cost of cleaning and lighting the passages landings and staircases of the house*
all [parts mentioned in (i) and (ii)] being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of the other three flats forming the main part of the house but excluding Flat No. 5

18. *To pay a one fifth share of the cost of maintaining repairing redecorating and renewing*
a. *the gas and water pipes drains and electricity cables and wires in under or upon the house other than those serving exclusively the demised premises or serving exclusively any other flat*
b. *the front boundary wall abutting on Wells Road and*
c. *the front gate front steps and the footpath leading to the main entrances of the house and the footpath leading around the house all being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of all other flats in the house including Flat No. 5*

Lease of Flat 4 (Tribunal's bundle pages 22 to 29)

22. For the purposes of these proceedings the material parts of the Lease of Flat 4 are as follows :

Recital 1

The Lessor is now seised in fee simple in possession free from incumbrances of the property consisting of five flats and garden ground known as 133 Wells Road Bath (hereinafter called "the house")

Clause 1

... .. the Lessor [demises Flat 4] being on the first floor including that part of the staircase and that part of the landing leading to the Flat from the main landing... .. and including one half part in depth of the joists between the floors of the Flat and the ceilings of the flat below it and (subject to clause 5(1) hereof) the internal and external walls above the same level and the roof of the house and the two chimney stacks so far as the same constitute the roof of the Flat... ..

Clause 2

The Lessee hereby covenants with the Lessor and with the owners and lessees of the other flats in the house [to] observe and perform the restrictions and obligations [in] the First Schedule hereto

Clause 3

The Lessor hereby covenants with the Lessee as follows :

(a)

(b) that the Lessor will require every person to whom shall hereafter grant a Lease of any flat in the house to covenant to observe and perform similar restrictions and obligations to those set forth in the First Schedule hereto being those applicable to the particular flat and will enforce such covenants and as to such parts of the house as have not been demised subject to such covenants the Lessor hereby covenants that she will herself observe such covenants

Clause 5

It is hereby declared as follows

(1) That every internal wall separating the flat from any adjoining flat shall be a party wall severed medially and shall be included in the premises hereby demised as far only as the medial plane thereof

(2)

(3) If there shall be any disagreement between the Lessee and the Lessor and/or the owners and lessees for the time being of the other flats in the building as to whether any of the works referred to in clauses 17 and 18 [sic] of the First Schedule hereto are necessary or desirable or as to the arrangements to be made for carrying out those works then so long as the present Lessor shall be the freeholder or occupier of any of the flats the decision of the Lessor shall be final and binding upon the Lessee but after the Lessor shall cease to be the Freeholder or occupier of any of the flats the matter shall be decided by an independent surveyor to be nominated by the persons liable to contribute to the expense of such works (and in default of agreement to be nominated by the president of the Royal Institute of Chartered Surveyors) whose decision shall be final and whose fees shall be borne by such persons in equal shares

First Schedule

7. *At all reasonable times during the said term on notice to permit the Lessor and her Lessees with workmen and others to enter into and upon the demised premises or any part thereof for the purpose of repairing any adjoining or contiguous premises and for the purpose of making repair maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables gutters wires party structures or other conveniences belonging to or serving or used for the same and also for the purpose of laying down maintaining*

repairing and testing drainage and gas and water pipes and electric wires and cables and for similar purposes the Lessor or her Lessees making good all damage occasioned thereby to the demised premises

8. *The Lessee shall... .. keep the demised premises... .. in a good and tenable state of repair and condition*

11 *The Lessor may with or without workmen and others at reasonable times enter upon and examine the condition of the demised premises and may thereupon serve on the Lessee notice in writing specifying any works or repairs necessary to be done for which the Lessee is liable hereunder and require the Lessee forthwith to execute the same and if the Lessee does not within two months after the service of such notice proceed diligently with the execution of such repairs or works then the Lessor may enter upon the demised premises and execute the same and the cost thereof shall be a debt due from the Lessee to the Lessor and shall be recoverable forthwith by action*

16(i) *To pay a one fourth share of the cost of maintaining repairing redecorating and renewing*

(j) the main structure and in particular the roof and chimney stacks

(k) the gutters and rainwater pipes of the house and

(l) the main entrances passages landings and staircases of the house

(ii) To pay a one fourth share of the cost of cleaning and lighting the passages landings and staircases of the house

all [parts mentioned in (i) and (ii)] being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of the other three flats forming the main part of the house but excluding Flat number 5

17 *To pay a one fifth share of the cost of maintaining repairing redecorating and renewing*

(d) the gas and water pipes drains and electricity cables and wires in under or upon the house other than those serving exclusively the Flat or serving exclusively any other flat

(e) the front boundary wall abutting on Wells Road and

(f) the front gate front steps and the footpath leading to the main entrances of the house and the footpath leading around the house all being parts of the house enjoyed or used by the Lessee in common with the owners and lessees of all other flats in the house including Flat number 5

Lease of Flat 5 (PH3)

23. The document at PH3 appears to be a copy of a draft lease, rather than a copy of a completed lease. There is no copy of the completed Lease before the Tribunal

Notice dated 3 April 2006 under section 20 of the 1985 Act (PH22)

24. In individual letters from Hadden Crespo Services Ltd dated the 3 April 2006 to each

leaseholder (PH22 to PH26), Hadden Crespo Services Ltd stated that they had been instructed by Mrs Heath as landlord to serve a first stage notice under the 2003 Regulations

25. The landlord intended to enter into an agreement to carry out the following works :
 1. repair of front boundary wall and the collapsing wall to left of entrance steps
 2. fireproofing works consisting of the installation of mains-powered fire alarm system and required building works within the communal hallway and entrance lobby in relation to fire protection including the replacement of all flat entrance doors and associated upgrading of old electric cable in the common parts
 3. rebuilding of electric meter cupboard
 4. resurfacing of the communal path around the property and associated repair of any communal steps that required attention
 5. connection and wiring of lights in common parts, door bells, an electric power point in communal hallway and new fire alarm to a new communal electric meter (the latter to be provided and paid for by the landlord)
 6. redecoration to the communal hallway and entrance lobby (including any associated plastering, flooring repairs and a new floor covering to entrance lobby); areas would be checked for any rot/woodworm and necessary action taken if required
 7. fireproofing and associated support works to party wall between flat 3's bedroom and flat 4's living room
 8. repairs to roof support timbers
 9. re-pointing to the exterior house wall
26. Reasons were attached
27. Each leaseholder had the right to make written observations to the landlord by sending them to Mr Paul Heath at his stated postal or e-mail address within the consultation period of 30 days, which would end on the 4 May 2006
28. The landlord invited each leaseholder to propose, within 30 days, the name of any person from whom the landlord should try to obtain an estimate
29. The notice was signed on behalf of Hadden Crespo Services Ltd "duly authorised agent of Housing Association"

Letter from Dale Johnstone & Co Solicitors 25 May 2006 (PH27)

30. Dale Johnstone stated that they were acting for Dr Deegalle and Mrs Martin in relation to the section 20 notice
31. Before the full description of works could be agreed, it was essential for a surveyor to have access to Flat 3 to inspect works carried out and partitions with other parts of the Building
32. In the meantime, their comments on the numbered items of works were :
 1. it was agreed that the repair of the front boundary was the repair priority, provided that the cost was split 5 ways between the leaseholders
 2. the Brooks' report had stated that the fire precautions were generally satisfactory but the use of the loft space for storage had increased the requirement for a fully integrated alarm system

and emergency lighting, so that the proposed costs were the direct result of actions by Ms Lawther, who should be solely responsible for the proposed costs

3. it was understood that the landlord had agreed to move all 5 meters into new boxes outside the Building at her own expense
4. the resurfacing of the communal path was desirable, but needed to be built into a long-term plan of maintenance and renovation of the Building
5. there was no objection to the landlord providing a new communal electricity meter at her own expense, but an estimate of the ancillary works and knock-on cost of any re-wiring between the box and individual Flats needed to be obtained before proceeding, and built in to long-term budgeting rather than acted upon immediately; the owner of Flat 3 was responsible for providing sufficient lighting to the hall and landing, but had at times disconnected the communal lighting, and should perhaps be responsible for some of the ancillary costs
6. redecoration of the communal hallways etc should be included in the long-term plan for maintenance and repair of the Building
7. fire-proofing between Flat 3 and Flat 4 arose directly from unauthorised works carried out by the owner of Flat 3, and she should be solely responsible; Dr Deegalle was not satisfied that the existing ceiling provided sufficient fire protection
8. a full inspection of the loft space was needed before assessing the works required to the roof support timbers, and consideration should be given to any detrimental effect caused by unauthorised alterations and DIY in the loft space by Ms Lawther in Flat 3, and any weakening of the floor/ceiling caused by the storage of heavy items
9. this was not an urgent repair and should be incorporated into the long-term scheme for maintenance of the Building

Mr Paul Heath's reply dated 10 July 2006 (PH28 [sic])

33. Some of the work had been discussed for 3 to 4 years and it was in the interests of all the leaseholders to resolve their disputes in a timely manner to avoid their flats being unsaleable
34. It was his duty, acting for the freeholder, to provide adequate fire precautions and stop the retaining wall at the front from collapsing with potential danger to the tenants and general public. The other items were relatively minor, and a piecemeal approach would be more expensive
35. Mr Paul Heath's comments on the numbered points were :
 1. the cost of repair of the front boundary was to be split 5 ways between the residents of the Flats
 2. the Brooks' report recommended that the Building be brought up to modern standards
 3. the freeholder had agreed to move all 5 meters into new boxes outside the Building at her own expense; the work had now been completed at a cost of £1,700 to her
 4. the communal path was in a poor state to the detriment of the value of the Building
 5. the freeholder would pay the bulk of the cost by providing the meter and attendant wiring, but the cost of rewiring from the new meter would be a communal cost and the quotations would provide answers to the actual costs of that rewiring

6. rewiring of the communal meter and the general poor state of the paintwork meant that the redecoration of the communal hallways could not be left until a later stage, but subsequently it would be sensible for the leaseholders to agree a longer-term plan to keep the decoration up to date
7. the work planned was to add a steel beam under the partition between the party wall, for both structural and fire precautions purposes; the situation had existed before Ms Lawther moved into her Flat
8. inspections of the loft space had already taken place by Peter Orme (commissioned by the freeholder) and Anthony Fisher Associates (commissioned by Ms Lawther)
9. this item would be removed from the work schedule

Contractors

36. A letter from T P Richards dated the 14 July 2006 (PH30) declined Mr Paul Heath's invitation to tender
37. A letter from John D Hill dated the 28 July 2006 (PH31) quoted for electrical works
38. A letter from Emerys of Bath dated the 10 August 2006 (PH32) quoted for various works, including repairing the front wall (£6,225), rebuilding the curved wall to the left of the entrance steps (£4,488), and laying a new tarmac path (£7,560)
39. A letter from R S Subcontractors dated the 14 August 2006 (PH33) quoted for various works, including front wall (£1,972), curved wall (£2,507), and communal footpath new slabs (£5,382)
40. An undated letter from John Palmer (PH34) quoted for the walls at the front and by the inner steps (£4,500), and paving the pathways (£7,500)

Notice 2 November 2006 under section 20 of the 1985 Act (PH35)

41. In individual letters from Hadden Crespo Services Ltd dated the 2 November 2006 to each leaseholder (PH35 to PH39), Hadden Crespo Services Ltd stated that they had been instructed by Mrs Heath as landlord to serve a second stage notice under the 2003 Regulations
42. The consultation period under the notice dated the 3 April 2006 had ended on the 4 May 2006
43. The quotations for the various works were summarised
44. They could be inspected by appointment with Mr Paul Heath
45. Each leaseholder had the right to make written representations to Mrs Heath, and should send them to Mr Paul Heath within the consultation period of 30 days, which would end on the 2 December 2006. Any observations received after that date would not be considered

Letter from Dale Johnstone & Co Solicitors 10 November 2006 (PH40)

46. In a letter bearing the words "Second Letter", Dale Johnstone & Co set out comments about the estimates referred to in the notice dated the 2 November 2006 to Dr Deegalle
47. In relation to the front and curved wall, Dr Deegalle had accepted the need for works to be carried out, but the estimates were far higher than estimates from T P Richards dated the 2 October 2003 and First Call Bath Building Repairs dated the 6 September 2003, which, although out of date, should be taken into account
48. The resurfacing of the communal path was not essential and should be included in a timetable

of works for the future

Mr Paul Heath's letter 18 November 2006 (PH41)

49. Mr Paul Heath referred to, and made comments on, a letter from Dale Johnstone & Co dated the 10 November 2006 "responding to my letter of 11 July 2006". There is no copy of that letter before the Tribunal. Mr Paul Heath also commented on the second letter from Dale Johnstone & Co at PH40. So far as the front wall, curved wall and communal path were concerned, the lowest quote received was £9,861. Dr Deegalle had not put forward the name of First Call Bath Building Repairs during the section 20 notice period

Dr Deegalle's letter 2 December 2006 (PH42)

50. Dr Deegalle commented, amongst other matters, that the proposed works to the footpath were extraordinarily expensive. They did not need new slabs. Tarmac would cost less than £1,000 if the quote from First Call Bath Building Repairs was accepted. He was going to apply to the Tribunal

Mr Paul Heath's letter 16 December 2006 (PH43)

51. Mr Paul Heath replied that the quote from R S Subcontractors for slabs was lower than the quote received for tarmac, and would provide a more attractive stone appearance matching the stone of the house. Dr Deegalle had not put forward the name of First Call Bath Building Repairs during the quotation process, and the quote he had received was several years out of date and appeared to be for a small section of the path running between the steps and the front door, rather than for the whole communal path

The application 27 November 2006

52. Dr Deegalle stated that service charges which were in dispute were the costs of the following proposed items :

- a. electric meters, electric cupboards, and associated wiring – his share £687.15
- b. fire safety work – his share £831.96
- c. repairs and redecorations to communal areas – his share £1,339.50
- d. front wall, curved wall, and communal path – his share £2,317.57 – in respect of which :
 - he agreed to pay his share of the cost of the front wall (£1,972) and curved wall (£2,507)
 - he disagreed with the cost of the communal path with slabs (£5,382)
- e. repairs of roof timbers – his share £528.75

53. Directions

54. In the directions dated the 8 January 2007 the Tribunal directed that Mrs Martin should be joined in these proceedings as an Applicant, and that Ms Lawther and Mr Kingston should be joined as Respondents, following applications from each of them in that respect. Mr R Heath was also named as a Respondent in the heading of the directions

The Hearing

55. At the beginning of the hearing, the Tribunal expressed concern about whether the Tribunal had jurisdiction under section 27A of the 1985 Act to determine the issues listed in the application

56. The Tribunal indicated that :

- a. section 27A gave the Tribunal jurisdiction to determine the payability of service charges
- b. service charges were defined in section 18 of the 1985 Act as being amounts payable by tenants for certain costs incurred by the landlord
- c. there was a distinction between, on the one hand, liability or entitlement to carry out works and, on the other hand, liability to contribute towards the cost
- d. liability or entitlement to carry out works might arise under an obligation in a lease, or, for example, under a notice served by a local authority, but that liability did not necessarily carry with it any right to recover from anyone else a contribution towards the cost
- e. if the liability or entitlement to carry out works arose under an obligation to another party in a lease, then an entitlement under the lease to a contribution to the cost would arise only if the lease so provided
- f. accordingly, if Mrs Heath as landlord carried out the proposed works :
 - she could recover the costs of repairs from the leaseholders by way of service charge only if the Leases so provided
 - she could recover the costs of improvements from the leaseholders by way of service charge only if the Leases so provided
- g. the Leases of the Flats :
 - demised specific parts of the Building to each leaseholder (clause 1 in each case)
 - contained covenants by each leaseholder to keep the specific parts demised to that leaseholder in good repair and condition (clause 2 and paragraph 8 of the first schedule in each case)
 - contained covenants by each leaseholder to pay a proportion of certain costs of maintenance, repair, decoration, and renewal (clause 2 in each case, and paragraphs 16 and 17, or 17 and 18, as the case might be, in the first schedule)
- h. accordingly, the Tribunal would need to hear submissions from the parties :
 - whether Mrs Heath as landlord was liable or entitled under the leases to carry out the proposed works
 - if so, whether she could in principal recover the costs by way of service charges under the Leases
 - whether any of the proposed works, such as the fire precautions and the installation of an alarm system, constituted improvements rather than repairs
 - if so, whether Mrs Heath as landlord could recover the costs of those improvements by way of service charges under the Leases

57. Mr Paul Heath and Ms Lawther said that the liability of each leaseholder to contribute towards costs incurred by Mrs Heath as landlord arose under :

- a. section 20 of the 1985 Act
- b. paragraphs 16 and 17, or 17 and 18, in the first schedule of each Lease

- c. clause 3(b) of each Lease
 - d. clause 7 of each Lease
 - e. paragraph 11 in the first schedule of each Lease
58. The Tribunal further indicated that the Tribunal proposed to give the parties more time to consider the matter and to obtain legal advice, and to give directions for a preliminary issue hearing to enable full submissions to be made. Dr Deegalle supported that proposal. Mr Paul Heath, Ms Lawther and Mr Kingston indicated that they would like to consider the proposal over the lunch interval
59. After the lunch interval, the Tribunal invited further submissions about whether Mrs Heath as landlord was liable to repair the front wall, curved wall, and communal path, under clause 3(b) of each Lease, when read in conjunction with recital (1) of each Lease. The Tribunal gave Dr Deegalle time to consider the matter
60. Dr Deegalle said that it depended on the meaning of “garden ground” in recital (1). He agreed that it included the front wall if “garden” included the front garden, but Dr Deegalle was the only leaseholder who did not have any specific part of the garden demised to him. He did not agree that the footpath was part of the garden. It was part of the Building. He agreed that the footpath was not specifically demised to any of the leaseholders, but said that they all had the right to use it
61. After considering the matter, the Tribunal indicated that the Tribunal was satisfied that the words “garden ground” in recital (1) included the front boundary wall, the curved wall to the left of the steps, and the footpath round the Building, and that Mrs Heath as landlord was liable to repair the front wall, curved wall, and communal path, under clause 3(b) of each Lease
62. The Tribunal indicated that the Tribunal would therefore now consider whether the proposed costs for those items would be reasonably incurred for the purposes of sections 19 and 27A of the 1985 Act

Boundary wall

63. Mr Paul Heath said that Mrs Heath as landlord proposed to instruct R S Subcontractors to do the work in accordance with their quote (PH33) for £1,972 for the front wall, and £2,507 for the curved wall, making a total of £4,479
64. Dr Deegalle agreed that the work was necessary, and that the figure was reasonable

Path

65. Mr Paul Heath said that Mrs Heath as landlord proposed to instruct R S Subcontractors to do the work in accordance with their quote (PH33) for £5,382 for slab construction. That quote was considerably cheaper than the other 2 quotes, one of which was for tarmac, and the other was for paving
66. Dr Deegalle said that he had originally preferred tarmac, but now agreed that slabs would be better. He also agreed the figure of £5,382, despite having now obtained a slightly cheaper quote at about £4,800
67. In relation to the timing of the work, he agreed that it would be good to have it carried out, but would prefer to assess the contractor’s quality first by asking him to carry out the works to the wall, and then to consider the matter again

68. Mr Paul Heath said that it was preferable to instruct the contractor to do both together to obtain a better price

69. On reflection, Dr Deegalle agreed

Jurisdiction about remaining items of works

70. The Tribunal again indicated that in the interests of the parties having a fair hearing, there should be a preliminary issue hearing on another day, to enable the parties to understand the issues fully, marshal their thoughts, obtain legal advice, and submit skeleton arguments, so that each party knew what the other party's case was before the hearing

71. Mr Paul Heath said that the Respondents had been able to consider the matter over the lunch break, and none of the Respondents wished there to be any further delay or expense. The Respondents wanted the Tribunal to make a decision about jurisdiction now at this hearing, rather than on another day at an adjourned hearing

72. The only additional submission on behalf of the Respondents was that Mrs Heath as landlord had power to carry out the works under clause 5(3) of each Lease, in that in the event of a dispute between leaseholders about the works referred to in paragraphs 16 and 17, or 17 and 18, in the first schedule, Mrs Heath as landlord could make the arrangements

73. Dr Deegalle opposed the making of a decision about jurisdiction now at this hearing. The jurisdictional points were complicated and had taken him by surprise, and he need more time to consider them properly

74. After considering the matter at length, the Tribunal indicated that the Tribunal had made the following decisions :

a. the Tribunal would make its decision about jurisdiction now because :

- Dr Deegalle would not be prejudiced by the lack of an adjournment for a preliminary issue hearing, because, if the Tribunal decided that it had jurisdiction, then his application would simply proceed, and, if the Tribunal decided that it did not have jurisdiction, it would only be the Respondents who would be prejudiced, in that it was the Respondents, not Dr Deegalle, who wanted to carry out the remaining works
- the Tribunal had explained very fully to the parties why the Tribunal would normally give directions for a preliminary issue hearing in a case such as this, and had given the Respondents the opportunity of considering the matter over the lunch break, but the Respondents had given cogent reasons why they wished the matter to be decided immediately

b. the Tribunal did not have jurisdiction to consider the remaining items because :

- each of the remaining items related to parts of the Building specifically demised to individual leaseholders under clause 1 of each Lease
- to the extent that any of the works fell within the individual leaseholders' repairing obligations under clause 2 and paragraph 8 of each lease, the individual leaseholders, not Mrs Heath as landlord, were liable for those works
- the provisions in the Leases referred to by the Respondents did not give Mrs Heath as landlord any power to include the costs of the works in a service charge payable

by the leaseholders

- paragraph 11 of the first schedule in each lease gave Mrs Heath as landlord power to carry out works in default of a leaseholder carrying that leaseholder's obligations and to claim the cost from that leaseholder as a debt, but :
 - Mrs Heath as landlord would first have had to serve a notice on the defaulting leaseholder under paragraph 11, and neither of the notices served under section 20 of the 1985 Act purported to be, or could be construed as, notices under paragraph 11
 - the subsequent debt owed by the leaseholder to Mrs Heath as landlord under paragraph 11 would not have fallen within the definition of a service charge in section 18 of the 1985 Act for the purposes of section 27A of the 1985 Act
- clause 5(3) did not give Mrs Heath as landlord power to carry out works :
 - it did not give a specific power to do so
 - it did not give an implied power to do so in that :
 - the reference to “arrangements to be made for carrying out those works” was not a reference to Mrs Heath as landlord carrying out any works herself, but a reference to Mrs Heath as landlord making a decision in the context of a “disagreement between the Lessee and the Lessor and/or the owners and lessees for the time being of the other flats in the building as to whether any of the works referred to in clauses 17 and 18 of the First Schedule hereto are necessary or desirable or as to the arrangements to be made for carrying out those works”
 - later in clause 5(3) it was specified who else would make that decision after Mrs Heath ceased to be landlord, and it could hardly be argued that that person would, by having that power to do make the decision, also have implied power to carry out the works as well
 - an implied power in clause 5(3) for Mrs Heath as landlord to do the works would make redundant her express power to do so in paragraph 11 of the first schedule
- paragraph 7 of the first schedule did not give Mrs Heath as landlord power to carry out works to a particular Flat, but rather gave her power to enter a particular Flat to carry out works to *adjoining or contiguous premises*
- paragraphs 16 and 17, or 17 and 18, in the first schedule were merely provisions for payments of contributions, and did not as such give Mrs Heath as landlord any free-standing right to claim those contributions, or any power to carry out works
- the effect of section 20 of the 1985 Act was to give protection to leaseholders who were liable to pay service charges, in that their liability to pay was limited unless consultation procedures were complied with; section 20 did not as such give Mrs Heath as landlord any free-standing right to claim service charges

Costs

75. Ms Lawther applied for an order for costs under paragraph 10 of Schedule 12 of CLARA 2002. She had had to take a day off work, and had incurred £163.14. 90% of Dr Deegalle's papers before the Tribunal were a personal attack on her personal life. She had spent 4 hours looking at his papers which had been delivered late in breach of directions. Dr Deegalle had acted vexatiously
76. Dr Deegalle said that the whole problem had been because Ms Lawther had acted maliciously towards Mr R heath and Mrs Heath. Dr Deegalle had had no option but to apply to the Tribunal and to present the facts. Ms Lawther should pay his costs
77. Neither Mr Paul Heath nor Mr Kingston made any application
78. After considering the matter, the Tribunal indicated that, having read the papers on each side and having listened to all the submissions, the Tribunal had decided not to make an order for costs in all the circumstances of the case

Summary of Tribunal's findings

79. The Tribunal finds that :
- a. if the costs of the front wall (£1,972) and curved wall (£2,507), and communal path with slabs (£5,382) were incurred by Mrs Heath as landlord then a service charge would be payable by the leaseholders to Mrs Heath as landlord under the terms of the leases for those costs and VAT if applicable
 - b. the Tribunal has no jurisdiction to make a determination about the costs of the other works proposed by Mrs Heath as landlord
 - c. the Tribunal makes no order for costs

Section 20 C application

80. The Tribunal has received no evidence or submissions in relation to this application either before or during the hearing
81. The Tribunal has considered the whole of the provisions in the Leases, but finds that :
- a. there is no provision in the Leases expressly or impliedly entitling Mrs Heath as landlord to include in the service charge any costs incurred by Mrs Heath in relation to these proceedings before the Tribunal
 - b. no such costs are payable by way of service charge accordingly
82. The Tribunal therefore makes no order under section 20C

Dated the 20 February 2007



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor