LON/00BD/LDC/2006/0067
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 20ZA OF THE LANDLORD AND TENANT ACT 1985,

Address	Courtlands Estate, Sheen Road, Richmond, TW10 5AT
Applicant	Courtlands Estate (Richmond) Limited
Respondent's	Leaseholders of Courtlands Estate
Hearing date	10th and 11th January 2007

Appearances

For the Applicant

Miss J Chamberlain-Mole
Miss N Hashemi
Mr A Harwood
Mr G Van Tonder
Mr J Roney

For the Respondent

Mr R Cummins

The Tribunal

Mr P Korn Chairman
Mrs H Bowers BSc (Econ) MSc MRICS
Mrs G Barrett JP

Ref: LON/00BD/LDC/2006/0067

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION UNDER SECTION 20ZA(1) OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Property:	Courtlands Estate, Sheen Road, Richmond TW10 5AT
Applicant:	Courtlands Estate (Richmond) Limited
Respondents:	All leaseholders within the Property
Application Date:	11th October 2006
Hearing Date:	10th and 11th January 2007
Representatives:	Mr G Van Tonder of Counsel with Mr J Roney of Lee & Pembertons Solicitors (for Applicant) Mr R Cummins in person (being one of the Respondents)

Members of Tribunal

Mr P Korn (chairman)
Mrs H Bowers
Mrs G Barrett

INTRODUCTION

1. This is an application under Section 20ZA of the Landlord and Tenant Act 1985 (as amended) (the "**1985 Act**") for a determination to dispense with the consultation requirements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "**2003 Regulations**") in respect of four separate sets of works, details of which are set out below.

2. The application arises out of an earlier application by Mr Roger Cummins, one of the Respondents, for a determination under Section 27A of the 1985 Act of liability to pay service charges in respect of some of those works. At the Pre-Trial Review on 19th October 2006 it was directed that the present application be heard immediately before Mr Cummins' application.

BACKGROUND

3. The Property is an Estate comprising 11 blocks of flats and, whilst there was some debate on the point, it appears that there are 238 flats in total. The Applicant is the current landlord of the Property and is a company limited by share capital. The members of the company and the members of the board of directors are all tenants of flats forming part of the Property. The board of directors is assisted by a full-time general manager, Mr A Howard-Harwood.

4. The application concerns the following four sets of works:-

   (i) Redecoration of Norfolk House and Marlborough House, including scaffolding during 2005 ("**Norfolk/Marlborough Redecoration**") at a cost of £70,946.51

   (ii) Garden maintenance during 2005 ("**Garden Maintenance**") at a cost of £65,793.48

   (iii) Redecoration of Runnymede House and Arundel House, including scaffolding during 2006 ("**Runnymede/Arundel Redecoration**") at a cost of £84,923.12

   (iv) Replacement lifts for Carisbrooke House and York House during 2006 ("**Replacement Lifts**") at an aggregate cost of £236,820.07.

5. On the basis of its stated belief that the Property contains 238 flats, the Applicant concedes that the cost of each of the four sets of works above amounts to more than £250 per flat, acknowledges that it should have consulted in accordance with the 2003 Regulations and accepts that it did not do so or did not fully do so in respect of any of the four sets of works.

THE HEARING

6. The hearing was held on 10th and 11th January 2007. The Applicant was represented by Mr G Van Tonder of Counsel with Mr J Roney of Lee & Pembertons Solicitors. Also present for the Applicant were Mrs J Chamberlain-Mole (chairwoman), Miss N Hashemi and Mr A Howard-Harwood (estate manager and company secretary). The only one of the Respondents present was Mr R Cummins, who was representing himself.

GENERAL SUBMISSIONS FOR APPLICANT

7. Counsel for the Applicant made a number of submissions in support of the application for a determination to dispense with the consultation procedure set out in the 2003 Regulations.

8. The management company is essentially run by the tenants for the tenants. There is therefore no financial or other incentive for the company to act otherwise than in the best interests of the tenants. Counsel suggested that if service charge recovery was limited due to the Tribunal refusing to grant the application the resulting shortfall would hurt the tenants as shareholders of the Applicant company, as the money would have to be found from somewhere.

9. Whilst there had not been strict compliance with the 2003 Regulations, the tenants had been kept informed in a number of ways. The Property was a big Estate and therefore it was necessary to have a rolling programme of works, but the tenants were given regular updates via letters, copy budgets and newsletters and there was a longstanding general invitation for the tenants to inspect information in the Estate office. All contractors were selected as part of an open bidding process (apart from in respect of the garden maintenance contract) and the directors had derived no personal benefit from selecting a particular contractor. There was a service charge certification mechanism in the leases which afforded the tenants further protection.

10. Whilst it was fully accepted that the Applicant had failed to comply with the 2003 Regulations, Counsel submitted that this was as a result of an honest mistake in the way in which the Applicant interpreted the 2003 Regulations. The reasons for this mistake are referred to later on.

11. Counsel invited the Tribunal not to accord much weight to the Witness Statement of Mr David John Watkins on behalf of the Respondents on the grounds that very little of it addressed issues directly relevant to this application and that, according to Counsel, Mr Watkins (who was chairman of the Applicant company until he retired in 2005) had "an axe to grind". The Tribunal was informed by Mr Cummins that Mr Watkins was currently unwell and therefore unable to attend the hearing and therefore to be cross-examined.

12. Counsel referred the Tribunal to copies of letters from residents of the Estate which were supportive of the Applicant's management of the Estate and were critical of the members of Concerned Residents Of Courtlands ("**CROC**") – a pressure group of other residents including Mr Cummins – for the manner of, and perceived motivation for, CROC's objections to the Applicant's method of management. Whilst one of the letters of support was written by a relative of one of the directors, there were other letters of support from residents unconnected with the directors.

13. Counsel noted that despite Mr Cummins having given the impression that he would be joined in his opposition to the application by other tenants in fact not one other tenant had joined him.

14. Counsel referred the Tribunal to a passage in the textbook Woodfall (paragraph 7.197) where it is suggested that deciding when to aggregate different sets of works for the purposes of determining whether the financial threshold had been reached for the 2003 Regulations to apply was sometimes very difficult, and that a common sense approach is therefore needed.

SPECIFIC SUBMISSIONS FOR APPLICANT

15. In relation to the **Norfolk/Marlborough Redecoration**, Counsel referred the Tribunal to the relevant paperwork. A tender was sent out to various companies, quotes were received and a decision was made as to which contractor should be awarded the contract.

16. Counsel submitted that because the works related to three separate elements they had been split into three separate amounts, each of which by itself was below the threshold for consultation under the 2003 Regulations. Whilst it was now accepted that the works should have been aggregated, the failure to do so was not a ploy to circumvent the 2003 Regulations. The contract was split with a view to considering using different contractors for each building. Counsel submitted that when applying the 2003 Regulations the Applicant made an honest mistake in believing that it could treat the works for each building as separate for the purposes of the 2003 Regulations.

17. In relation to the **Garden Maintenance,** Counsel submitted that the arrangements for 2005 needed to be seen in the context of the arrangements that had been in place since 1999. Briefly, a contract was entered into in 1999 with Gavin Jones Group for garden maintenance. In 2001 the Applicant became unhappy with the standard of workmanship and there were ongoing discussions with the same contractor in the course of which the original contract expired. The Applicant continued to pay on a monthly basis, there was then a suggestion by the contractor that a new contract be entered into and subsequently the Applicant confirmed that there had been a great improvement in the standard of workmanship. The contract has not been entered into to date and maintenance continues at a monthly rate of £4,666.20 plus VAT per month.

18. The Applicant apparently did not feel it necessary to consult with the tenants on the Garden Maintenance as there was no formal contract and the original contract was entered into well before the 2003 Regulations came into force. Counsel also invited the Tribunal to consider whether the existing arrangements could be seen as a monthly contract and therefore perhaps not caught by the 2003 Regulations, although Counsel did not place much reliance on this point.

19. In relation to the **Runnymede/Arundel Redecoration**, notice of intention to carry out the works was given to all tenants by letter dated 2nd December

2005, and this contained an invitation to inspect the details or to discuss them or to forward written observations, including as to details of any other contractor from whom an estimate should be obtained. By a letter dated 26th May 2006 the tenants were informed of the tenders received and of the recommended choice of contractor, were invited to contact the estate manager if they wished to discuss the work or examine the specifications and were asked to forward any written observations by 26th June 2006. More information was given in a letter dated 4th July 2006. Observations were received from two tenants, and although the Applicant believed that it had satisfied the tenants' concerns it was conceded that the observations and the response to them were not copied to other tenants.

20. In relation to the **Replacement Lifts**, the letter of 2nd December 2005 referred to above also dealt with the subject of lift replacement in Runneymede House. However, it later became apparent that the lifts in Caribrooke House and 9-16 York House were more in need of attention than those in Runneymede House. This was explained to tenants in the letter of 26th May 2006 referred to above. In the May letter the preferred contractor was named, together with its cost estimate. Another contractor was named but its tender had not been received, hence no cost estimate could be given in respect of this contractor. Some further information was given at the AGM held on 31st May 2006. A small amount of further information was given by letters dated 15th September 2006 and 30th September 2006. Counsel submitted that non-compliance was partly due to the fact that there was a change in requirements and that the Caribrooke House and York House lifts had unexpectedly become a priority.

SUBMISSIONS FOR RESPONDENTS

21. Mr Cummins stated that the reason why there were not more tenants opposing the Applicant's application was because it had been believed that each tenant would have to pay an additional fee. Mr Cummins conceded that he did not have any written evidence that any other tenants opposed the application.

22. Mr Cummins summarised his understanding as to the circumstances in which landlords were obliged to consult tenants under the 2003 Regulations. He submitted that the 2003 Regulations had been in force for a long time and that there was user-friendly guidance available to help landlords to understand their obligations. There was therefore no excuse for non-compliance.

23. Mr Cummins referred the Tribunal to the letter dated 20th July 2005 from Mr Robert Whelan (one of the tenants) to Mr Howard-Harwood of the Applicant. This letter alerted the Applicant to the possibility that it had not complied with the 2003 Regulations and yet it still did not take any steps to comply.

CROSS-EXAMINATIONS

24. Mr Cummins questioned Mrs Chamberlain-Mole about Mr Howard-Harwood's response of 22nd July 2005 to Mr Whelan's letter of 20th July 2005. Mr Cummins suggested that the response implied that there was no need to comply with the 2003 Regulations as the Applicant was confident that a tribunal would dispense with the need for consultation if requested to do so. Mrs Chamberlain-Mole denied that there was any intention to pre-judge what a tribunal would do. When asked by Mr Cummins whether legal advice had been sought in response to the points raised in Mr Whelan's letter, Mrs Chamberlain-Mole was not sure but highlighted the fact that the letter concluded by inviting Mr Whelan to a meeting.

25. In response to a question from the Tribunal, Mrs Chamberlain-Mole said that she was unclear as to exactly when the Applicant realised that there was a possibility that it had not complied with the 2003 Regulations. She agreed that the Applicant was aware of the possibility on receipt of Mr Whelan's letter of 20th July 2005 but added that there was probably a doubt before that date. Miss Hashemi added that the Applicant was at all relevant times "alive" to the 2003 Regulations; in her view the Applicant did not comply with the 2003 Regulations simply because it thought that they did not apply in the particular circumstances.

26. Mr Cummins suggested to Miss Hashemi that the Norfolk / Marlborough Redecoration works were split into separate parcels in order to circumvent the 2003 Regulations. Miss Hashemi denied this and said that splitting the works gave the Applicant the option of using different contractors for different elements of the contract.

27. The Tribunal asked Miss Hashemi whether the Applicant gave proper consideration to Mr Whelan's letter of 20th July 2005 and she confirmed that the Applicant did consider it but decided to proceed nonetheless. Mr Howard-Harwood added that the Applicant did take legal advice. It was slightly unclear how directly it sought or received detailed legal advice on this point at this time, but Mr Howard-Harwood stated that the Applicant had already been seeking legal advice on connected matters and then copied this letter to its solicitors.

28. In response to a question from the Tribunal and a follow-up question from the Applicant's Counsel, Miss Hashemi conceded that the response to Mr Whelan's letter of 20th July 2005, whilst it did invite him to a meeting, was expressed slightly harshly. However, this had to be seen against the backdrop of the campaign that has been waged against the Applicant by CROC, in particular the material that had been circulated by CROC to residents of the Estate which had caused much upset.

29. In response to a question from the Tribunal, Mr Howard-Harwood said that he had no previous experience of being involved in works requiring consultation. He also conceded that no tender analysis was sent out to tenants and that tenants were not advised of the actual cost of the works otherwise than via the audited service charge accounts.

30. In response to a question from Counsel for the Applicant as to why any tenants who supported him in opposing the application had not written letters of support, Mr Cummins said that he thought that the Tribunal would not regard such evidence as relevant. Counsel also put it to Mr Cummins that the end result had been exactly the same as if the 2003 Regulations had been complied with. Mr Cummins conceded that it was possible that this was the case but that nevertheless it was important to establish for the future that the Applicant could not simply choose to disregard the 2003 Regulations.

THE LAW

31. Under Section 20 of the 1985 Act, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by regulations unless either certain consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

32. "Qualifying works" are defined in Section 20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Section 6 of the 2003 Regulations.

33. The relevant consultation requirements are set out in Part 2 of Schedule 4 to the 2003 Regulations. To paraphrase very briefly, the landlord must give notice to each tenant of its intention to carry out the works, describing the works in general terms or specifying where and when a description of the works may be inspected, stating the reasons for the proposed works, inviting written observations (and specifying the time limit for delivery of observations) and inviting tenants to propose the name of a person from whom the landlord should try to obtain an estimate. The landlord must also obtain estimates for the carrying out of the work, supply all tenants with a statement setting out details of at least two estimates, make all estimates available for inspection and invite written observations on the estimates. The landlord must supply to all tenants a summary of any observations received from any tenant on either the proposed works or any of the estimates and of the landlord's response.

34. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

35. Mr Cummins cited the LVT case of **Wilson v Stone** (1998) 2 EGLR 155 which concerned an application under the old Section 20(9) of the Landlord and Tenant Act 1985 (now replaced by Section 20ZA) for dispensation from complying with the then consultation requirements. This case concerned the carrying out of works which the landlord and one of the tenants agreed needed to be carried out urgently as there was a risk that the building would otherwise collapse. Another tenant objected that the landlord had failed to comply with the consultation requirements, but the tribunal held that the landlord had acted reasonably in not consulting and that the requirement to consult should accordingly be (retrospectively) dispensed with.

36. The tribunal in the *Wilson* case took the view that the emergency in that case was exactly the type of situation envisaged by the old Section 20(9) as being one in which dispensation should be given. Mr Cummins suggested that this case was authority for the proposition that the only circumstances in which dispensation can be given are where there is an emergency and therefore there is simply no time to comply with the consultation requirements.

37. Counsel for the Applicant took issue with Mr Cummins' analysis of the *Wilson* case. He submitted that whilst that case did indeed concern an emergency situation there was nothing contained in the tribunal's decision to indicate that dispensation could only be given in an emergency situation. Counsel also cited two other cases, namely the Court of Appeal case of **Broadwater Court Management Co Limited v Mrs Sylvia Jackson-Mann** (1997) EGCS 145 and the County Court case of **Hoggett v Knox** (2000) 5 CL 434.

38. In *Broadwater*, the Court of Appeal upheld the decision of the Recorder dispensing with the requirement for consultation under the old Section 20(9) in respect of works which were not emergency works. The Recorder's reasoning (summarised briefly) was that the landlord had a good track record in consulting tenants even when not required to do so, the landlord did serve a notice on the complaining tenant (although it did not do so in the correct statutory form, did not use the specific word "observations" and gave a response deadline date of less than a month), the lowest tender was chosen, the costs were reasonable, the landlord was a tenants' management company rather than a commercial landlord exploiting its tenants, the work was actually

carried out 5 months later (and so the tenants in practice received more than the minimum one month's notice) and the work was necessary.

39. The Court of Appeal added to the above reasoning that no other tenants appeared to have complained. In delivering the Court of Appeal's judgment, Chadwick LJ stated "I am satisfied that the Recorder exercised the discretion conferred on the court by Section 20(9) on a proper appreciation of the facts and in accordance with proper principles. There is no cause for this court to interfere with that exercise of discretion."

40. In *Hoggett*, a prohibition notice directing cessation of use of a lift was served on the landlord's agent by the local authority. Having previously already established a sinking fund to provide for the lift's replacement the landlord obtained various tenders, accepted the lowest one and then before commencing the works delivered copies of the report on the various tenders to the tenants. The landlord conceded that the consultation requirements had not been complied with and requested dispensation, again under the old Section 20(9).

41. The Court held that dispensation should be given. Section 20(9) envisaged relief in circumstances where it could be said that the landlord acted reasonably such as where there was an emergency, but the Court held that an emergency was not necessarily the only situation in which dispensation could be given and "the question of whether the landlord acted reasonably was a broad base for discretion to be exercised". The Court added that the complaining tenant had made no complaint about the necessity of works or their cost until these points formed part of its defence and had chosen not to contact the landlord in connection with the issue of the lift despite knowing about its condition.

42. Counsel for the Applicant argued that the *Broadwater* and *Hoggett* cases were authority for the proposition that dispensation could be given for reasons other than the need to carry out emergency works and that the facts of the *Broadwater* case bore many similarities to the present case. These points will be addressed later on.

43. As regards the *Wilson* case, whilst it concerned an emergency situation the Tribunal does not agree with Mr Cummins that it is authority for the proposition that dispensation can **only** be given in cases of emergency. In any event, Mr Cummins failed to address the points made by Counsel for the Applicant in respect of the *Broadwater* and *Hoggett* cases.

APPLICATION OF LAW TO FACTS

44. In respect of each of the four sets of works which are the subject of this application the Applicant accepts that the works are qualifying works in

respect of which the Applicant is seeking to recover more than £250 per tenant, that the consultation requirements apply to each set of works and therefore either need to be complied with or dispensed with in accordance with Section 20(1) of the 1985 Act. The Applicant further accepts that it has not (whether fully or at all) complied with the consultation requirements in respect of any of the four sets of works, hence the application for dispensation.

45. Whilst Section 20ZA of the 1985 Act does not make specific reference to emergency situations as being ones in which a tribunal should exercise its discretion, previous cases and common sense suggest that emergency situations are the classic circumstances in which a tribunal can exercise its discretion to dispense with the consultation requirements. In the present case, whilst in the case of the Replacement Lifts it was argued that there was a change of **priorities**, in respect of none of the four sets of works was it argued on behalf of the Applicant that the consultation requirements could or should not have been complied with due to the existence of an emergency.

46. The Applicant is therefore asking the Tribunal to use its discretion to dispense with the consultation requirements on other grounds. The members of the Applicant company in this case are the tenants, and so as in the Broadwater case the Applicant does not have an obvious incentive to exploit the tenants. Whilst the Applicant has not strictly complied with the 2003 Regulations it has complied with some of the 2003 Regulations and has generally provided the tenants with information on its works programme, has invited comments and afforded tenants the opportunity to inspect plans, specifications etc. Counsel for the Applicant has submitted that where the Applicant has not complied with the letter of the 2003 Regulations it has complied with the spirit.

47. In relation to the Norfolk / Marlborough Redecoration, the Tribunal's view is that the Applicant did not come close to complying with the 2003 Regulations and did not appear to attempt to do so. The Applicant argues that this is the result of an honest mistaken belief. However, it received Mr Whelan's letter of 20th July 2005 before it began carrying out the work, and no compelling evidence was brought to indicate that it could not have complied with the 2003 Regulations at that stage. Given that the Applicant was then on notice that at least one tenant (for plausible reasons) was claiming that the Applicant needed to comply and (on Counsel's and Mr Howard-Harwood's own admission) it was difficult to be sure when works should be aggregated for the purposes of the 2003 Regulations, the Applicant had little excuse for non-compliance.

48. In any event, the Tribunal is far from persuaded that a mistaken belief that the 2003 Regulations do not apply is a sufficient ground for dispensation. The Tribunal is also not persuaded by Counsel for the Applicant's submission that

a refusal to grant dispensation will cause the Applicant to suffer serious financial difficulties.

49. In relation to the Garden Maintenance, the fact that there was no formal contract does not alter the fact that the aggregate amount paid for Garden Maintenance is over the consultation threshold. No valid reason for failing to consult or for failing to seek alternative quotes has been offered, and the submission that it was not thought necessary to consult with the tenants is not in the Tribunal's view a sufficient justification for the Tribunal to exercise its discretion to dispense with the consultation requirements.

50. In relation to the Replacement Lifts, here there was at least some genuine attempt by the Applicant to consult and therefore to comply with the 2003 Regulations at least in part. The letter of 2nd December 2005 was a starting point, but that letter related to the lifts that the Applicant was originally going to replace rather than the lifts that it later prioritised, and so the Applicant then had to start the process again in respect of the lifts that it was actually going to replace. The letter of 26th May 2006 dealt with part of the first stage of the consultation requirements in respect of the lifts that were actually going to be replaced but only gave one estimate.

51. The further information on the Replacement Lifts given at the AGM on 31st May 2006 did not shed much more light on the position and the follow-up letter of 15th September 2006 did not fully deal with the second stage of the consultation requirements. It failed to name the chosen contractor, to explain the basis on which the unnamed contractor was chosen and to invite observations on the material issues (although any such invitation would have been after the event anyway) and it was not sent to all tenants. The letter of 30th September 2006 did finally name the contractor but otherwise merely dealt with logistics. Given the fact that the Applicant has a paid full-time manager of what is not such a large Estate, there seems to be little excuse for such a material failure to comply with the 2003 Regulations.

52. In relation to the Runnymede/Arundel Redecoration, whilst the letter of 2nd December 2005 plus enclosures was arguably a little confusing in that it was perhaps made harder than necessary for the tenants to piece together exactly what their rights were in relation to each set of works, the letter (in particular the fifth and sixth paragraphs) did cover much of the first part of the consultation requirements. The letter of 26th May 2006, in particular paragraphs 12-15 and the last two paragraphs, coupled with the letter to all tenants of 4th July 2006 then dealt with substantially the balance of the consultation requirements. Whilst there was still a clear breach in that the Applicant failed to notify all tenants of the two observations received from particular tenants, neither of these observations impacted on the cost or scope of the works. In the Tribunal's view therefore the Applicant came very close to complying with the consultation requirements.

53. The Tribunal notes that the old Section 20(9) of the 1985 Act envisaged dispensation being given where the landlord had acted reasonably whereas the new Section 20ZA(1) refers to the Tribunal being satisfied "that it is reasonable to dispense with the requirements". Counsel submitted that the new Section allowed a tribunal greater scope to dispense with consultation, but the Tribunal is not persuaded that this is the case. A landlord could act reasonably, for example if it failed to comply with the consultation requirements due to ignorance of the requirements or an honest mistaken belief that they did not apply, but in the Tribunal's view this did not in and of itself mean that it would be reasonable to dispense with the requirements. The precise wording of Section 20ZA(1) should also be noted; a tribunal "may" make the determination to dispense if "satisfied" that it is reasonable to do so.

54. In the Tribunal's view, the need to carry out emergency works is the classic situation envisaged by Section 20ZA(1) as warranting dispensation with the consultation requirements, either in advance or retrospectively, and whilst Section 20ZA(1) does not state that dispensation should only be given in cases of emergency, there would have to be very compelling reasons for dispensation in non-emergency cases. It cannot have been Parliament's intention that landlords could routinely bypass the 2003 Regulations by persuading a tribunal or a court that they had made an honest mistake or had complied with the "spirit" of the law or that compliance did not matter because the landlord was a management company owned by the tenants and/or had chosen the lowest quote and/or had a good track record and that therefore the tenants would not in practice be prejudiced by the failure to consult.

55. Some of the factors referred to above were factors influencing the decision in Broadwater. However, both *Broadwater* and *Hoggett* were decided under the old Section 20(9) and it may well be that the landlord in those cases could be said to have acted reasonably for the purposes of the old Section 20(9). Also, *Broadwater* and *Hoggett* can be distinguished from our case in that the Applicant was put on notice of the problem by Mr Whelan's letter of 20th July 2005. In addition, whilst the case summary of *Hoggett* is rather brief, making it difficult to be clear as to the detailed rationale, in *Broadwater* it would seem that there was a higher level of compliance by the landlord than there was by the Applicant in the present case in respect of the Norfolk / Marlborough Redecoration, the Garden Maintenance and possibly the Replacement Lifts.

56. The Tribunal does accept that some weight should be accorded to the point that the landlord is not a commercial landlord with something obvious to gain from failure to consult and to some of the other points referred to in the section above headed "General Submissions for Applicant". In the view of the Tribunal, where the failure to consult is minimal, in other words where there has been substantial but not full compliance, it is appropriate for a

tribunal to take into account the matters mentioned above in considering whether to dispense with the need for full detailed compliance.

57. The Tribunal finds that there was significant non-compliance with the 2003 Regulations in respect of the Norfolk/Marlborough Redecoration, the Garden Maintenance and the Replacement Lifts. In relation to the Runnymede/Arundel Redecoration, whilst the letter of 2nd December 2005 could have been set out in a clearer, more user-friendly way, the Tribunal finds that there was substantial (although not full) compliance with the 2003 Regulations and that no tenants appear to have been prejudiced by the small elements of non-compliance.

DETERMINATION

58. The Tribunal refuses the Applicant's application for a determination to dispense with all or any of the consultation requirements in relation to the Norfolk/Marlborough Redecoration, the Garden Maintenance or the Replacement Lifts.

59. The Tribunal grants the Applicant's application for a determination to dispense retrospectively with such of the consultation requirements in relation to the Runnymede/Arundel Redecoration as have not been complied with.

60. No submissions were made at the hearing as to the reasonableness of any of the service charge costs which were the subject of the Section 20ZA application and the Tribunal therefore makes no finding as to the reasonableness or otherwise of any of those costs.

61. No applications for costs or fees were made. Counsel for the Applicant applied for a direction that all tenants be barred from making an application to the Leasehold Valuation Tribunal for their service charge contribution to the Norfolk/Marlborough Redecoration and/or the Garden Maintenance and/or the Replacement Lifts to be reduced until the Tribunal's written decision had been served on the Applicant and the period within which it can lodge an appeal had elapsed. The application was refused, the Tribunal explaining that it did not have the power to make such a direction in such circumstances.

CHAIRMAN...
Mr P Korn

Date: 23rd January 2007