3287

NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

MAN/OOBR/LAC/2006/0007

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SCHEDULE 11 PARAGRAPH 5 COMMONHOLD AND LEASEHOLD REFORM ACT 2002.

Application under paragraph 5(1) (payability and amount of administration charge)

Applicant:	Mr and Mrs Sargeson
Respondent:	GHM (Trustees) Ltd and Barbara Helen Glass and David Glass

Application under paragraph 3(1) (variation of administration charge)

Applicant:	GHM (Trustees) Ltd and Barbara Helen Glass and David Glass
Respondent:	Mr and Mrs Sargeson
Property:	20 East Lynn Drive, Walkden, Worsley, Manchester M28 3WF
Date of Application:	28 September 2006

Members of the Leasehold Valuation Tribunal:

Martin Davey (Chairman)
Elizabeth Thornton-Firkin

Date of Tribunal's Decision: 20 June 2007

Applications

1. An application under paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002 for determination of the liability of the applicant lessees for payment of an administration charge, was received by the Leasehold Valuation Tribunal (the tribunal) on 12 October 2006. The application, which is dated 28 September 2006, was made by Mr and Mrs Sargeson through their solicitors, Widdows Pilling and Co of Walkden, Worsley Manchester. The applicants are the leasehold proprietors of the subject property and hold the residue of a 999 year term originally granted to them by Holman and Smith Ltd on 29 March 1985. The annual ground rent is £50.00. The respondent to that application is the current freeholder GHM (Trustees) Limited & Barbara Helen Glass and David Glass 145-157 St John Street London EC1V 4PY.

2. By directions issued by a Procedural Chairman on 6 December 2006 the tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested an oral hearing. No such request was received. However, a cross application was made by the lessors for the variation of an administration charge specified in the applicants' lease. By directions issued by a Procedural Chair on 15 March 2007 the two applications were consolidated. By a letter from the case officer to the parties dated 16 April 2007 it was confirmed that the tribunal would make a determination, on the basis of written submissions.

Background

3. The subject property is a dwelling-house. The leaseholders obtained planning permission and building regulation approval to extend the house. The lease contains a covenant by the lessees in clause 2(xi) "Not to make or suffer to be made any substantial

alteration or addition affecting the elevation external structure or stability of any building on the demised premises nor to erect or set up or permit to be erected or set up upon any part of the demised premises any new buildings or structure without the previous consent in writing of the Company and to pay the Company or its Agent the sum of ten pounds for the approval of any plans or documents submitted in connection therewith."

4. On 7 June 2006 Mr Sargeson wrote to the freeholders, enclosing plans of the proposed extension, stating that planning permission and building regulation approval had been granted for the same. He further asked for the lessors' consent to the proposed works for the purposes of clause 2(xi) and enclosed a cheque for ten pounds. By a letter to Mr Sargeson dated 24 July 2006 the lessors stated that the costs involved in granting consent far exceeded £10 (mentioning £200 or £300 plus VAT) and that, no matter what the lease said, at that time permission was refused. The lessors added "Let us make it absolutely clear so that there is no misunderstanding between us that should you proceed without approval, we will immediately serve proceedings on you."

5. On 8 September 2006, Widdows, Pilling and Co wrote to the lessors stating that the charges proposed by the lessors were unreasonable and unfair. The lease was unequivocal in stating that only £10 was recoverable for approval of the lessees' request. They also added that the demand for the administration charge was not accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges as required by the Commonhold and Leasehold Reform Act 2000.

6. In a written submission to the Tribunal dated 18 December 2006 the lessors stated that "An amount of £10 might have been reasonable in 1985 or even then there may have been some doubt as to that, certainly almost 22 years later the amount cannot be other than

unreasonable. Thus we would ask the Tribunal to consider what would be reasonable in the matter set out in this specific issue. " In regard to the matter of failure to produce a "summary of the rights and obligations" the lessors denied that clause 2(xi) in the lease related to an administration charge it referring to an "Approval". They also sought recovery of their own costs to date in dealing with the lessees of £60.

7. In a reply dated 22 December 2006 the lessees stated that the lease was clear and that in any event £10 in 1985 equated to £20 in 2006 and they submitted that the fee payable should not exceed that sum. They also considered the demand for £200 to £300 to be excessive for approval of the plans that had received planning and building regulation approval from the local authority. They further submitted that the charge in clause 2(xi) fell within the definition of an administration charge in the 2002 Act being one paid "directly or indirectly for considering applications or providing approvals."

8. By a letter dated 12 February 2007 the lessors confirmed that they were in effect seeking a variation of the administration charge. By directions dated 15 March 2007 a procedural chair required the respondent to the original application to provide a draft of the variation sought.

9. By a letter dated 23 March 2007 the respondent asked that the following substitution be made to clause 2(xi) of the lease.

10. "Not to make or suffer to be made any substantial alteration or addition affecting the elevation external structure or stability of any building on the demised premises nor to erect or set up or permit to be erected or set up upon any part of the demised premises any new buildings or structure without the previous consent in writing of the Company and to pay the Company or its Agent a reasonable sum for the approval of any plans or documents submitted in

connection therewith. It should be understood that such approval may require the instruction by the Company or its Agent of a Chartered Surveyor."

11. In response the lessees oppose the requested variation and state that the lease clearly provides for the sum of £10 and should not be altered. In any case in their opinion this amendment would leave them at the mercy of the lessors who could charge whatever they considered reasonable. They said that the lessors had originally demanded £881.25 to consider giving consent and had later lowered this figure to £200 -£300. The lessees considered this to be unreasonable and excessive and reiterated that if the local planning authority had granted approval it should be a 'rubber stamping exercise' for the lessor who need not incur other than negligible expenses. The extension had been held up by the lessors' intransigence and the costs of the works had now increased. In the circumstances the lessees seek costs against the lessors.

12. The lessors in reply state that the sum that they require has been determined as reasonable by a Chartered Surveyor. The use of the word 'reasonable' in the proposed amendment of clause 2(xi) means that if the parties cannot agree there would need to be an independent assessment from the tribunal. Furthermore, the requirements of the lease are in addition to the need for local authority approval.

The Law

13. Administration charge is defined in Schedule 11 para 1 of the Commonhold and Leasehold Reform Act 2002 as "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly (a) for or in connection with the grant of approvals under his lease, or applications for such approvals....." (para 1(1)(a)).

14. By para 2 " A variable administration charge is payable only to the extent that the amount of the charge is reasonable." A "variable administration charge" means "an administration charge payable by a tenant which is neither – (a) specified in his lease, nor (b) calculated by reference to a formula in his lease" (para 1(3)).

15. By para 3(1) "Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that

(a) any administration charge specified in the lease is unreasonable, or
(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable."

16. Para 4 provides

(1) A demand for payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

17. By para 5(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is as to –

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

18. Section 19(2) of the Landlord and Tenant Act 1927 provides that "in all leases....containing a covenant condition or agreement against the making of improvements without licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of .....any legal or other expenses properly incurred in connection with such licence or consent ....."

The determination

19. The lessees argue that clause 2(xi) of their lease provides for payment of an administration charge of £10 in the circumstances specified in that clause and that this is an administration charge for the purposes of schedule 11 of the Commonhold and Leasehold Reform Act 2002. The tribunal agrees. The payment specified in clause 2(xi) falls squarely within the definition in para 1 of schedule 11 being "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly (a) for or in connection with the grant of approvals under his lease, or applications for such approvals....." (para 1(1)(a)). The lessors' claim that the payment is outwith this definition is accordingly rejected.

20. The lessees seek a determination under para 5 as to payability of an administration charge under clause 2(xi) of the lease. They argue that they are liable to pay £10. As noted above the lessors counterclaim for a variation of the lease to substitute, for the requirement that the lessees pay the Company or its Agent the sum of ten pounds - for the approval of any plans or documents submitted in connection with a proposed alteration, a requirement that the lessees pay a reasonable sum for the approval of any plans or documents submitted in connection with the same.

21. The tribunal finds that such a variation is not necessary or reasonable. The lease is a modern lease granted as recently as 1985. The lessors are deemed to have been perfectly well aware of its terms when they acquired the reversion. Thus the only sum payable by the terms of the lease in connection with the approval of any plans or documents submitted in connection with a request for consent to effect the alterations etc that fall within clause 2(xi) is the £10 specified in the lease. However, section 19(2) of the Landlord and Tenant Act 1927 applies not only to covenants against improvements but also to alteration covenants where the proposed alteration or addition amounts to an improvement. See e.g. *v Lambert v F.W. Woolworth & Co Ltd No 2* [1938] 1 Ch 883 CA where it was held that that in deciding whether or not an alteration is an improvement it must be viewed from the point of view of the tenant and not of the landlord.

22. It is tolerably clear from section 19(2) that it operates alongside the terms of the lease and that accordingly if the lessors give consent they may require as a condition of such licence or consent the payment of a reasonable sum in respect of .....any legal or other expenses properly incurred in connection with such licence or consent ....." This also falls within the definition of an administration charge for the purposes of the 2002 Act.

23. In the present case the proposed works for which approval is sought are clearly works of improvement and as such the covenant against alterations without the previous consent in writing of the company is on the true construction thereof a "covenant or agreement against the making of improvements without licence or consent within the meaning of section 19(2) of the 1927 Act. It follows that the lessors are adequately protected by this proviso and that a variation of the lease is unnecessary.

24. The issue then becomes one of determining for the purposes of the 2002 Act what would be a reasonable sum for any legal or other expenses properly incurred in connection with the approval of the tenant's plans for the proposed alterations. In the present case the lessees have already obtained planning permission and building regulation approval and it is impossible to conceive of any court holding that it would be reasonable for the lessors to withhold consent to the proposed alterations. The approval of the plans should be a formality as submitted by the lessees. The notion, stated in the lessors' letter of 12 April 2007 to the lessees' solicitors that the lessors could lay themselves open to proceedings from any other interested parties such as neighbours who may well be affected by the works in question is fanciful.

25. In these circumstances the Tribunal finds that the lessors' perusal of the plans and notification of their decision to the tenant would not require the proper incurring of expenses other than a sum in the order of £75.00. The Tribunal accordingly determines that the lessees are liable to pay an administration charge of £75.00 in respect of the lessors' approval of the lessees' plans in respect of the proposed alterations to the property. This is inclusive of the fixed administration charge of £10 provided for by the lease. The sum of £200-300 suggested by the Managing Agents Trust Property plc is unreasonable in the straightforward circumstances of this case. Furthermore, it is not at all clear that the letter from Mr

Benjamin Mire of the Trust to Mr David Glass of Lakeside Developments Ltd was making reference to the costs in connection with approval of plans and/or of proceedings before the LVT. The latter are not recoverable in any event save in the limited circumstances set out in para 10 of schedule 12 to the 2002 Act (which are not applicable in this case).

Further matters

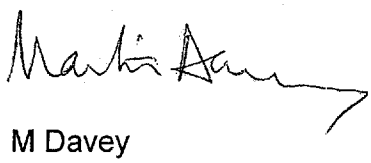
Costs: Application fee

26. The Tribunal has a discretion, under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 to order that the respondent be required to reimburse the applicant's fee in respect of an application. The Tribunal has decided to exercise that discretion in favour of the lessees in respect of their application. The lessors' letter to the lessees of 24 July 2006 was intemperate and belligerent in tone and suggested that the lessees would be liable for the lessors' costs in time and travel. The terms of the lease were quite clear and the lessors did not point to any authority to justify the imposition of the charge that they were purporting to require, either under the terms of the lease or the general law. They have also unnecessarily delayed the commencement of the building works proposed by the lessees.

Costs incurred in connection with the proceedings

27. The lessees have also asked the tribunal to determine that the lessors should pay the costs incurred by the lessees in connection with the present proceedings. However, the circumstances in which the tribunal may award costs are severely circumscribed by schedule 12 paragraph 10 of the 2002 Act. They are limited to a maximum of £500 and can only be awarded at the discretion of the tribunal either (1) where an application has been dismissed in whole

or in part on the grounds that the application was frivolous or vexatious or otherwise an abuse of process or (2) where a party has in the opinion of the tribunal acted frivolously, vexatiously, abusively disruptively or otherwise unreasonably in connection with the proceedings. Despite the unreasonable stance adopted by the lessors that led to the lessees' application being made in the present case, the tribunal is not sufficiently satisfied that the circumstances fall within either of the exceptional cases outlined above. The lessors' counter application, although dismissed, cannot be said to have been misconceived.



M Davey
Chairman of the Tribunal