Residential
Property
TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/45UH/LSC/2007/0052

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Premises: Stoke Abbott Court Stoke Abbott Road Worthing West Sussex BN11 1HJ

Applicants: Mr T Wood (flat 58)
Mr & Mrs J Fieldus (flat 26)
Mr & Mrs M F Charles (flat 86)
Mr & Mrs P J Brackley (flat 52)
Mr & Mrs Thomas (flat 82)
Mr A Aido & Ms D Remy (flat 12)
Mr A Underdown (flat 36)
Mr B Mtandabari (flat 42)
Mr C Barber (flat 76)
Mr D Banks (flat 6)
Mr D Coulson (flat 80)
Mr J Manley Bird (flat 46)
Mr S Markwick (flat 48)
Mrs J Denyer (flat 50)
Ms A Colgate (flat 44)
Ms A Kennard (flat 28)
Ms C Penny (flat 90)
Ms C Shanley (flat 94)
Ms E Ramsay (flat 54)
Ms J Griffin (flat 8)
Ms S E Norman (flat 32)
Ms T Winn & Mr M Coombes (flat 60)
Ms V Vermundsen (flat 56)

Respondent: Swan Lane Estates Ltd

Appearances for Applicant: Mr T Wood (flat 58)

Appearances for Respondent: Ms G Bedworth of Counsel

Date of Hearing: 17 September 2007
Date of Inspection 17 September 2007

Date of Decision: ...30 September 2007.....

Leasehold Valuation Tribunal: Mrs F J Silverman LLM
Mr R Wilkey FRICS
Ms J Dalal

DECISION

No items were in dispute for the service charge year ending 31 December 2004 and no matters affecting this year were put before the Tribunal for their consideration.

The amount payable by the tenants in respect of service charges for the financial year ending 31 December 2005 is £20,589.00.

The amount payable by the tenants in respect of service charges for the financial year ending 31 December 2006 is £5,523.41.

Of the charges to be levied in respect of service charge year ending 31 December 2007 and considered by the Tribunal we allow £22,803.36
This service charge year is incomplete and this decision relates only to those charges which were considered by the Tribunal under this application.

In all the above cases the Applicants' share of the charges is assessed in accordance with the proportions set out in their respective leases.

The Applicants' application under s 20 C is granted.

REASONS

1 The Tribunal received an application dated 25 May 2007 from Mr T Wood, the first named Applicant above, relating to service charges payable for the service charge years 2004-2007 inclusive under the terms of his lease of flat 58 Stoke Abbott Court Stoke Abbott Road Worthing West Sussex BN11 1HJ.

2 Other tenants in the same block, Stoke Abbott Court ('the property'), were joined into the application at their request. The full list of Applicants

appears above. All Applicants support the application made by Mr Wood. Their leases are all in similar terms to that held by Mr Wood. This decision and reasons applies to all named Applicants.

3 The application therefore relates to the provisions of s 27A Landlord and Tenant Act 1985 as amended.

4 An application was also made to limit the landlord's costs under s 20C of the Landlord and Tenant Act 1985 as amended.

5 A letter addressed to the Tribunal from the Applicants also requested the appointment of a manager and an award of compensation. The Tribunal explained to the parties that it did not have jurisdiction to award compensation and that a formal application would need to be made to the Tribunal if the Applicants wished to proceed with their request for the appointment of a manager.

6 The Tribunal inspected the exterior and common areas of the property at 9.30am on the morning of the day of the hearing.

7 The property comprises a two storey block of flats above ground floor commercial premises in the centre of Worthing. Although the alignment of the block is along Stoke Abbott Road, the front end of the block faces the main shopping street in the town The block is thus conveniently situated very close to all amenities including the railway station and a short walk from the sea front. There is no allocated parking for the flat residents and on street parking in the area is restricted.

8 The property appears to have been built in the 1930's and its exterior is in a poor condition , not assisted by the fact that the ground floor commercial premises are currently vacant and the immediate surrounding area of the block is unkempt and dirty.

9 Entrance to the flats is obtained through two sets of entrance doors on the ground floor, one in Stoke Abbott Road, the other, at the rear of the property, opens on to Winton Road.

10 Both sets of doors had been vandalised and the door glass has been replaced by plywood. The doors appear to be insecure, are unsightly and present a very uninviting entrance to the property. An entryphone system exists but we were told by the Applicant that it was defective.

11 Inside each entrance door there is a small entrance lobby and a wide staircase which leads to the flats. The entrance areas and staircases were dirty and smelly. Paint was peeling off the walls.

12 A further staircase leads from each side of the first floor level to the flats on the upper level of the property. These too were dirty and smelly.

13 The property comprise 48 flats, one half being accessed from Stoke Abbott Road, the other half from Winton Road. The only internal access from one side of the property to the other at the upper floor level would be across a short raised section of flat roof at one end of the building. We were told that two short ladders which had given access to the flat roof had been removed by the Respondent.

14 At first floor level the flats are set around a courtyard in the centre of which were a number of large concrete flower tubs which constitute the only 'garden area' of the property. The tubs were in a neglected state and devoid of plants.

15 Access to the flats at the upper floor level is along a narrow balcony edged with a railing which was broken in places and appeared to be insecure.

There was evidence of loose wiring around the roof line of the upper floor flats.

16 Lighting to the communal areas and staircases exists but we were informed by the Applicant that it was defective.

17 The Respondent's surveyor pointed out the drainage work which had recently been carried out at the property in order to resolve recurrent flooding problems at ground floor level.

18 The general impression of the property was that it was in a serious state of neglect and disrepair.

19 The hearing took place at the Richmond Room, Stoke Abbott Road Worthing on 17 September 2007. The Applicants were represented by Mr T Wood and the Respondent by Ms G Bedworth of Counsel.

20 Both parties had prepared bundles of documents which were placed before the Tribunal for their consideration.

21 The service charges in dispute arise from a demand served by the Respondent on each tenant and dated 16 April 2007. The demand (page 2 of Respondent's bundle) did not itemise the amounts to which it related . The service charge year runs from 1 January to 31 December in each year. Some of the charges under discussion in this document relate to the current service charge year (2007) and have not yet been invoiced to the tenants.

22 The schedule of charges produced by the Respondent (page 1 of their bundle) was also undated and it was only possible to identify the dates of the various charges by reference to the Respondent's statement of case.

23 It appeared that a number of the items included in the schedule related to charges incurred more than 18 months before service of the demand.

24 The Tribunal asked the Respondent to provide evidence of their compliance with s 20 B of the Landlord and Tenant Act 1985 which provides that items of service charge are not recoverable unless a demand is made within 18 months of the charge being incurred.

25 The Respondent produced an undated and unaddressed photocopy page (not included within their bundle) which purported to demonstrate their compliance with s 20 B. The Tribunal was not satisfied with this evidence and adjourned the hearing for 30 minutes to allow the Respondent the opportunity to obtain a faxed copy of further evidence to show their compliance with this provision.

26 The Respondent failed to produce any further evidence relating to this matter over the adjournment and the Tribunal decided that all items pre-dating 16 October 2005 should therefore be disallowed because of the Respondent's failure to comply with s 20 B.

27 Following the lunch recess the Respondent produced a further copy letter addressed to one tenant of the property (the addressee was not one of the Applicants in the present case) which purported to demonstrate their compliance with s 20B. The Tribunal adjourned for a short tine to allow the Applicants to consider this letter. On resumption the Applicants said that none of them had received a copy of the letter. The Tribunal's initial decision on this matter therefore remains unaltered.

28 This means that the Respondent is unable to recover items 1-18 of their schedule (Respondent's bundle page 1) and listed as items 15.1-15.18 in their statement of case, starting with Block premium (£10,182.85) down to and including Peter Overill (£3,198.06).

29 The Tribunal noted that the Respondent had had the benefit of legal advice and representation and considered that evidence to comply with s 20B (if it existed) should have been included in the Respondent's bundle and referred to in their statement of case. Neither was done.

30 The remaining items on the schedule are within the 18 month time limit and are discussed below. References below to item numbers relate to those assigned by the Respondent in their statement of case and page numbers are to those pages within the Respondent's bundle unless otherwise stated.

31 Item 15.19 and page 79. This invoice states that it relates to Flat 8. No further clarification of the works involved was provided by either party. It does not therefore constitute a service charge item and is disallowed.

32 Item 15.20 and page 80. This invoice relates to electrical maintenance carried out at the premises and is allowed in full.

33 Item 15.21 and page 81. This invoice appears to relate to an inspection of the property by the Respondent's then managing agents and is disallowed because Mr Wood had already reported to the Respondent details of the disrepair, a further inspection was therefore unnecessary.

34 Item 15.22 and page 82. This invoice relates to gardening and cleaning carried out at the premises. The Applicants stated that no gardening or cleaning had been carried out at the property at this time nor had any been done until after the Applicants made their application to the Tribunal in May 2007. The only possible gardening related to the maintenance of a few tubs placed on the first floor courtyard. These were, on inspection, found to be sadly neglected and devoid of plants. Evidence of cleaning was also lacking. On inspection the common parts were found to be dirty and smelly. If any cleaning or gardening was done the Tribunal is not satisfied that it was done to a reasonable standard and disallows this item.

35 Item 15.23 and page 83. This invoice relates to the provision of fire safety equipment at the property and is allowed in full. Fire extinguishers were in place at the property on inspection. The Applicants accepted that this work had been done.

36 Item 15.24 and page 84. Major drainage works were carried out at the property in order to resolve a recurrent flooding problem which affected the ground floor of the building. Mr Overill, the Respondent's surveyor said that the problem had arisen because the original drainage system , installed when the building was constructed, was inadequate to deal with the amount of waste water and effluent generated by modern living. We accept Mr Overill's evidence that the cost of the works would not have been substantially lower if they had been carried out earlier. While the Tribunal accepts the Respondent's explanation for the need for the works and considers that the work carried out was both necessary and done to a reasonable standard it is not satisfied that proper notice under s 20 Landlord and Tenant Act 1985 as amended was served on the Applicants. Such a notice is necessary where the landlord proposes to carry out works which will cost in excess of a certain sum. That sum is specified by statutory instrument and in the present case amounts to £12,000.

37 Page 54 of the Respondent's bundle contains a single sheet of a letter purporting to be a s 20 notice. The letter is incomplete, part of the page supplied had been obscured by a note written or pasted over it and it was impossible for the Tribunal to read. No copies of the estimates

accompanied the letter. The Respondent produced a specification of the works (prepared by their surveyor) on the morning of the hearing, but this did not show any of the contractors' estimates for the work. We accept the Respondent's evidence that they engaged the lowest priced contractor and that the work was completed under budget. However we have not seen evidence that a proper notice was served on the Applicants nor of the certificates provided by the surveyor and therefore restrict the sum allowable under this invoice to the statutory limit of £12,000.

38 Item 15.25 and page 85. This invoice relates to Mr Overill's fees for supervising the major works. We accept that it would have been reasonable for the Respondent to engage a surveyor to oversee this project and accept Mr Overill's evidence that he inspected the works on a regular basis. However we did not see the contract between the Respondent and Mr Overill and are therefore unable to assess fully the scope of his duties. There is no mention of Mr Overill's fees in the portion of the s 20 notice put before the Tribunal (page 54). Mr Overill's invoice states that he charged 12% of the value of the works as his fee. The Tribunal accepts that this is a reasonable fee for an experienced surveyor undertaking this type of work and allows this invoice in full. (£3,235.95).

39 Item 15.26 and page 86. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

40 Item 15.27 and page 87. This invoice relates to the cost of clearing the ground floor of the building to allow access for the completion of the drainage works comprised in the major works project. The pipes and drains from the flats on the upper floors would necessarily need to pass through the ground floor to connect with the public sewer and we accept the Respondent's evidence that it was necessary for the ground floor to be vacated for this part of the work to be accomplished. We heard evidence from Mr Ellis who had been the tenant of the ground floor at the relevant time. He confirmed that the work could not be achieved unless the premises were emptied and that this involved deconstructing (and later reconstructing) childrens' play equipment which was a specialised job.

41 He confirmed the Respondent's evidence that they had obtained two quotes for the removal of the equipment which were in the order of £10,000 (the Respondent said £12,000). He had therefore agreed with the Respondent to remove and later reinstall the equipment himself for the sum of £5,000.

42 This item effectively forms part of the major drainage works project and should have been included in the s 20 notice served on the Applicants. There was no evidence that the notice included this sum nor that any supplementary notice had been served in respect of it. Since we have allowed above (paragraph 37) the maximum claimable in the absence of a valid s 20 notice, this sum is disallowed in full.

43 Item 15.28 and page 88. This invoice in the sum of £1,251.14 relates to the annual rental of the entryphone system. We allow one half of this sum accepting the Applicants' evidence that the system is not properly maintained and is defective. We therefore allow £625.57.

44 Item 15.29 and page 89. This invoice relates to Mr Overills' fees for overseeing the major works project. For the reasons given above (Paragraph 38) we allow this invoice (£3,902.01).

45 Item 15.30 and page 90. This invoice relates to a further tranche of works carried out under the major works contract. We have already allowed above (paragraph 37) the maximum sum recoverable by the Respondent in the absence of evidence of service of a valid notice under s 20. No further sum is allowable here and the whole of this invoice is disallowed.

46 Item 15.31 and page 91. The invoice from CPS Property Services does not specify what work was done. The Respondent said that the work related to replacement of broken glass in the rear main doors. The Applicants contended that this item should have been recoverable under the building insurance policy. There was no glass in the main rear door when the Tribunal inspected the property. In the absence of firm evidence as to what works were covered by this invoice it is disallowed in full.

47 Item 15.32 and page 92. The Respondent maintains that this invoice relates to the clearance of rubbish. Although the invoice does not fully detail the work carried out it includes a tipping charge which suggests that it was connected with the removal of large items of waste. We allow this in full (£152.75).

48 Item 15.33 and page 93. There is no indication of what work was carried out under this invoice which is disallowed.

49 Item 15.34 and page 94. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

50 Item 15.35 and page 95. There is no indication of what work was carried out under this invoice which is disallowed.

51 Item 15.36 and page 96. The Respondent asserted that this invoice related to the removal of a roof ladder at the property. The Applicants agreed that the ladders had been removed and expressed concern at their removal since the ladders formed part of the means of escape from the second floor in the event of fire. The ladders were not in place when the Tribunal inspected the property. The Tribunal disallows this item because it does not consider it reasonable for the Respondent to remove safety equipment from the premises without replacing it with an alternative piece of equipment.

52 Item 15.37 and page 97. This invoice relates to Mr Overills' fees for overseeing the major works project. For the reasons given above (Paragraph 38) we allow this invoice (£1,424.38)

53 Item 15.38 and page 98. This invoice relates to a further tranche of works carried out under the major works contract. We have already allowed above (paragraph 37) the maximum sum recoverable by the Respondent in the absence of evidence of service of a valid notice under s 20. No further sum is allowable here and the whole of this invoice is disallowed.

54 Item 15.39 and page 99. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

55 Item 15.40 and page 100. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

56 Item 15.41 and page 101. This invoice relates to Mr Overills' fees for overseeing the major works project. For the reasons given above (Paragraph 38) we allow this invoice (£694.95)

57 Item 15.42 and page 102. This invoice relates to a further tranche of works carried out under the major works contract. We have already allowed above (paragraph 37) the maximum sum recoverable by the Respondent in the absence of evidence of service of a valid notice under s 20. No further sum is allowable here and the whole of this invoice is disallowed.

58 Item 15.43 and page 103. This item is not addressed to the Respondent nor to their agent and relates to the interior of an individual flat. It does not form part of the service charge. The Tribunal does not accept the Respondent's interpretation of the lease where they assert that they are responsible for all pipework including that inside individual flats. Clause 4 (i) of the lease refers only to the pipework belonging to the common parts and that within the part of the building retained by the landlord. This item is disallowed.

59 Item 15.44 and page 104. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

60 Item 15.45 and page 105. This item is disallowed since it appears to relate to an individual flat and does not specify what work was carried out.

61 Item 15.46 and page 106. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

62 Item 15.47 and page 107. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

63 Item 15.48 and page 108. Although the invoice specifies a particular flat number, we consider that on balance this work was carried out to the common parts since it refers to the 'balcony' and the only balcony at the property is a common balcony on the upper floor of the building. The work carried out is specified in the invoice and we allow this sum in full (£214.44).

64 Item 15.49 and page 109. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

65 Item 15.50 and page 110. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

66 Item 15.51 and page 111. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

67 Item 15.52 and page 112. This invoice relates to an asbestos survey and risk assessment carried out at the property. We consider that it was reasonable for the Respondent to commission such a survey. The Applicants' assertion that the survey included the commercial premises on the ground floor of the building was confirmed by Mr Leslie, the former tenant of the ground floor. That being so we do not consider that the whole cost of the survey should be borne as a service charge item payable by the

tenants of the flats. The flats occupy two storeys of the three storey building and on that basis we conclude that the cost chargeable to the tenants should be two thirds of the total cost ie we allow the sum of £806.83.

68 Item 15.53 and page 113. The Applicants raised no objection to this item. This invoice relates to drain and gulley clearance and we allow it in full (£162.15).

69 Item 15.54 and page 114 was withdrawn by the Respondent and so is disallowed.

70 Item 15.55 and page 115. This invoice relates to an emergency sewer repair at the property. We accept the Respondent's evidence that the reference in the invoice to the ground floor premises relates to the connection between the pipes leading to the property and their connection through the ground floor premises. We consider this amount to have been reasonably incurred and allow it in full (£211.99).

71 Item 15.56 and page 116. This invoice relates to legal charges incurred by the Respondent in connection with the management of the property and is chargeable under clause 6 of the lease. We allow this sum in full (£352.50).

72 Item 15.57 and page 117. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

73 Item 15.58 and page 118. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

74 Item 15.59 and page 119. This invoice relates to the clearance of rubbish at the property and is allowed in full (£229.13).

75 Item 15.60 and page 120. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

76 Item 15.61 and page 121. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

77 Item 15.62 and page 122. This invoice in the sum of £1,297.44 relates to the annual rental of the entryphone system. We allow one half of this sum accepting the Applicants' evidence that the system is not properly maintained and is defective. We therefore allow £648.72.

78 Item 15.63 and page 123. This invoice dated January 2007 relates to the replacement of glass in the main entry doors. The Applicants maintained that this item should have been claimed as an insurance item and further that ordinary glass (not safety glass) was used in the repair. At the time of inspection there was no glass in the main doors. Even if this work was done , the Tribunal considers that it was not done to a reasonable standard since no evidence of it now exists and the doors are in a deplorable and unsafe condition. This sum is disallowed.

79 Item 15.64 and page 124. This invoice relates to an inspection of the property by the Respondent's agents. It is dated on the same date as item 15.63 but may have been carried out by different people. The Tribunal considers that it is reasonable for the Respondent to commission a report on the condition of the property and allows this sum in full (£88.13).

80 Item 15.65 and page 125. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

81 Item 15.66 and page 125. This invoice relates to the insurance of the block. The Respondent is responsible for insurance under the terms of the leases between themselves and the Applicants but is in turn bound by an insurance covenant in its own head lease and therefore has little freedom of choice in respect of this item. The Applicants asserted that the insurance was too expensive but had been unable to obtain alternative quotations. We allow this sum in full (£ 22,235.23).

82 Items 15.67 and 15.68 and page 129 and 130 are duplicate invoices and are disallowed.

83 Item 15.69 and page 131. This invoice relates to gardening and cleaning purportedly carried out at the property and is disallowed for the reasons given in paragraph 34 above.

84 Item 15.70 and page 132. This invoice relates to gardening and cleaning purportedly carried out at the property in April 2007. The Applicants said that some work had been done from April 2007 onwards. Little evidence of either gardening or cleaning was apparent on inspection of the property but we allow one half of this invoice on the basis that some work was done by Mr Frost at this time. The amount allowed is therefore £120.00.

85 Item 15.71 and page 133. This invoice relates to gardening and cleaning purportedly carried out at the property in May 2007. We allow one half of this item (£120) for the same reasons as are cited in paragraph 84.

86 Item 15.72 and page 134. This invoice relates to gardening and cleaning purportedly carried out at the property in June 2007. We allow one half of this item (£120) for the same reasons as are cited in paragraph 84.

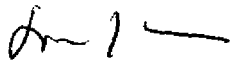
87 Item 15.73 and page 135 . This item has not yet been invoiced to the tenants. It relates to the retention paid under the major works contract. We have already allowed above (paragraph 36) the maximum sum recoverable by the Respondent in the absence of evidence of service of a valid notice under s 20. No further sum is allowable here and the whole of this invoice is disallowed.

88 Item 15.74 and page 136. This invoice relates to gardening and cleaning purportedly carried out at the property in July 2007. We allow one half of this item (£120) for the same reasons as are cited in paragraph 84.

89 A summary of the charges allowed by the Tribunal appears in the schedule annexed to this document.

90 The Applicants made an application under s20 C Landlord and Tenant Act 1985 as amended to prevent the Respondent from adding the costs of these proceedings to the service charge account. The Applicants said that they had been forced to bring the matter before the Tribunal and remained very unhappy about the condition of the property. The Respondent opposed this application . They said that most tenants had refused to pay their service charges , resulting in a stalemate which would have made an application to the Tribunal by the Respondent necessary in order to recover these sums. It was evident that some money had been expended on the property and it was reasonable to add the costs of the proceedings as a service charge item.

91 The Tribunal considers that the Applicants were justified in bringing their application before the Tribunal. Much of the service charge demanded by the Respondent has been disallowed because of the Respondent's failure to follow the correct procedures under s 20 Landlord and Tenant Act 1985 as amended and further sums have been disallowed because the Tribunal was not satisfied as to the standard of work provided or the lack of evidence that work was done. The Tribunal grants the Applicants' application under s 20 C.



Frances Silverman
Chairman
30 September 2007

Schedule

Summary of items allowed

Breakdown by service charge year (year end 31 December)

2004

No items affecting this year were put before the Tribunal for their consideration.

2005

Items 15.1-15.18 inclusive were disallowed because of the Respondent's failure to comply with s 20 B.

Items 15.20-15.26 and Items 15.29-15.30

Item 15.20	£ 199.66
Item 15,23	£ 1,790.71
Item 15.24	£12,000.00
Item 15.25	£ 2,696.62
Item 15.29	£ 3,902.01
TOTAL	£20,598.00

2006

Items 15.27 – 15.28 and Items 15.31 -15.62

Item 15.28	£ 625.57
Item 15.32	£ 152.75
Item 15.52	£ 806.83
Item 15.37	£1,424.38
Item 15.41	£ 694.95
Item 15.48	£ 214.44
Item 15.53	£ 162.15.
Item 15.55	£ 211.99
Item 15.56	£ 352.50
Item 15.59	£ 229.13
Item 15.62	£ 648.72
TOTAL	£5,523.41

2007

Items 15.63 -15.74

Item 15.64	£ 88.13
Item 15.66	£22,235.23
Item 15.70	£ 120.00
Item 15.71	£ 120.00
Item 15.72	£ 120.00
Item 15.74	£ 120.00
TOTAL	£22,803.36

Residential
Property
TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/45UH/LSC/2007/0052

Premises: 58 Stoke Abbott Court Stoke Abbott Road Worthing West Sussex BN11 1HJ

REFUSAL OF APPLICATION TO APPEAL AND REASONS

1 By application dated 12 October 2007 the Landlord Swanlane Estates Ltd applied to the Tribunal for leave to appeal its decision dated 30 September 2007.

2 Having considered the application the Tribunal refuses leave to appeal.

3 The application for leave to appeal does not demonstrate any point of law on which an appeal could be sustained.

4 The application is misconceived. The Landlord was in receipt of legal advice throughout the proceedings and failed to include in the agreed bundle any evidence of compliance with s 20B Landlord and Tenant Act 1985. This is a section with which it is mandatory for the Landlord to comply and the Tribunal is within its rights to ask for evidence of compliance.

5 The Tribunal extended a discretion to the Landlord by adjourning the hearing to allow them to obtain such evidence which was not forthcoming in the time permitted by the Tribunal. When some evidence was produced after the lunchtime adjournment the Tribunal once again exercised its discretion by allowing production of the late evidence. Such evidence as was produced did not

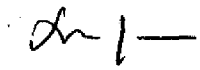
however satisfy the Tribunal that there has been proper compliance with the section.

6 The Landlord's argument in respect of s 20 is similarly misconceived. It is the Landlord's duty to ensure that it comes to the Tribunal with sufficient evidence to satisfy the Tribunal as to compliance with the requirements of the section. Such evidence as the :Landlord had included in the hearing bundle was inadequate for this purpose. The copy supplied was also incomplete and did not demonstrate that there had been proper compliance with the section. It is noted that the Landlord had the benefit of legal advice throughout the proceedings.

7 The Tribunal is entitled to ask to see proper compliance with both these issues even in the absence of the matters being raised by the Tenants who .were not legally represented.

8 There is no prospect of a successful appeal in this case.

9 In accordance with section 175 of the Commonhold and Leasehold Reform Act 2002 , the Appellant may make further application for leave to appeal to the Lands Tribunal .



Frances Silverman
Chairman
17 October 2007

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A & S20C Landlord & Tenant Act 1985(as amended)("the Act")

Residential Property
TRIBUNAL SERVICE

Case Number:	**CHI/45UH/LSC/2007/0052**
Property:	**Stoke Abbott Court** **Stoke Abbott Road** **Worthing** **BN11 1HJ**
Applicants/Leaseholders:	Mr T Wood (Flat 58) Mr & Mrs. J Fieldus (Flat 26) Mr M F Charles & Mrs. Greenwood (Flat 86) Mr & Mrs. Thomas (Flat 82) Mr A Aido & Ms D Remy (Flat 12) Mr A Underdown (Flats 36 & 22) Mr B Mtandabari (Flat 42) Mr C Barber (Flat 76) Mr D Banks (Flat 6) Mr D Coulson (Flat 80) Mr J Manley Bird (Flat 46) Mr S Markwick (Flat 48) Mrs. J Denyer (Flat 50) Ms A Colgate (Flat 44) Ms A Kennard (Flat 28) Ms C Penny (Flat 90) Ms C Shanley (Flat 94) Ms J Griffin & Mr C Harrity (Flat 8) Ms S E Norman (Flat 32) Ms T Winn & Mr M Coombes (Flat 60) Ms V Vermundsen (Flat 56) Mr and Mrs. P Brackley (flat 52) Ms E Ramsey (Flat 54) Mr Cochran and Mrs. G Davies (88)
Respondent/Landlord:	**Swanlane Estates Limited**
Appearances for the Applicants:	**Mr C Harrity and Mr T Wood**
Appearances for the Respondent:	**Mr Deneham Barrister** **Nail McGuiness Property Manager**
Date of Inspection /Hearing	**Wed 25th March 2009 (1st Day)** **Tues 12th May 2009 (2nd Day)**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman)** **Mr B H R Simms FRICS (Valuer Member)** **Mrs. J Morris (Lay Member)**
Date of the Tribunal's Decision:	**17th June 2009**

DECISION IN SUMMARY

1. In respect of Flats 22,26,36,50 and 52 the Respondent complied with the consultation requirements of section 20 of the Act in respect of the maintenance charges claimed for the major drainage works. In respect of the balance of flats whose owners are Applicants in these proceedings the Respondent did not comply with the consultation requirements of Section 20 of the Act.

2. In respect of Flats 22 and 42 the Respondent did comply with the requirements of section 20B of the Act in respect of maintenance charges incurred prior to the 16th October 2005. ("the Historic Charges") In respect of the remainder of flats whose owners are Applicants in these proceedings the Respondent did not comply with the requirements of section 20B of the Act in respect of the Historic Charges.

3. An Order is made under 20C of the Act so that the costs incurred by the Respondent in respect of these proceedings and the earlier proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining future service charges.

4. The costs of the major drainage works were reasonable.

5. The Historic Charges are subject to the limitations in recovery as set out in this decision.

6. No Order is made in relation to the reimbursement of fees incurred by the Applicants in these proceedings.

THE APPLICATIONS

7. In this hearing there were two applications before the tribunal as follows: -

   i) An application under section 27A of the Act originally made by Mr T. Wood dated the 25th May 2007.

   ii) An application under section 20C of the Act also made by Mr T. Wood dated the 16th August 2007.

8. The section 27A application concerned maintenance charges, which the Respondent sought to recover from the tenants for the accounting years 2004 to 2007 inclusive. Mr Wood and the other twenty-two tenants or joint tenants, who have been joined as Applicants, have challenged these maintenance charges. The ambit of these applications has been affected by a decision of the tribunal dated the 30th September 2007 and a decision of the Lands Tribunal dated the 5th August 2008.

THE ISSUES TO BE DECIDED

9. As a result of the decisions referred to above the remit of this tribunal is to carry out a second substantive hearing of the applications but narrowed to the following specific issues: -

a) whether the Respondent complied with the consultation requirements of section 20 of the Act in respect of the maintenance charges claimed in respect of the major drainage works carried out at the building.

b) If the Respondent has so complied, whether the cost of the drainage works was reasonable.

c) Whether the Respondent has complied with the requirements of section 20B of the Act in respect of the maintenance charges incurred prior to the 16th October 2005 ("the Historic Charges").

d) If the Respondent has so complied, whether the Historic Charges were reasonable.

e) Whether all or any of the Respondent's costs should be limited under section 20C of the Act.

PRELIMINARY MATTERS

10. Mr Deneham contended that the tribunal's remit did not extend to investigating the payability / reasonableness of the historic charges ("Historic Charges") mentioned in paragraph 9d above. The Lands Tribunal decision had not remitted this issue for a second substantive hearing and the subsequent directions issued by the tribunal were explicit in the issues to be reheard and were silent on this point. Furthermore the Applicants had made no submissions challenging the reasonableness of the charges. In his opinion it followed that if this tribunal were satisfied that the Respondent did serve section 20B notices in respect of these items, the Respondent was entitled to recover £32,413.16 and that was the end of the matter.

11. Mr Deneham made further representations. He contended that it would be unfair to proceed with the paragraph 9d issue today because his clients would be taken entirely by surprise and were not prepared for this issue. As a result they would be prejudiced which would result in the very same defects from the first hearing being repeated at this hearing.

12. The tribunal then adjourned the hearing to consider how it should proceed. Upon the resumption of the hearing the tribunal informed the parties that it would deal with paragraphs 9a and 9c as preliminary points and deal with these issues today. Evidence in respect of items 9b and d & e would be heard at a later date following the tribunal issuing further directions.

13. The tribunal then put the parties on notice that in considering if the Respondent had complied with the consultation procedure the tribunal would review the form and content of the notices themselves. Again Mr Deneham objected to this course of action. His submissions in this respect were that the Applicants had not raised any issue on the form or content and that the directions issued by both the tribunal and the Lands Tribunal also had made no reference to the form or content. In these circumstances it would be wrong and procedurally unfair if the tribunal were, of its own motion, to investigate content.

14. The tribunal considered these submissions but rejected them. As accepted by the Lands Tribunal what the tribunal may usefully raise on its own initiative will depend upon all the

circumstances. In this case, the tribunal was concerned that on the face of it the notices appeared to contain inherently irreconcilable dates. This led to uncertainty as to which year the consultation exercise was supposed to have taken place. In the light of this uncertainty the tribunal considered that it could not properly determine the issue of consultation compliance unless it examined the form and content of the notices. This was the case even if the unrepresented Applicants had not specifically pleaded that the inaccuracy of the notices rendered them defective.

15. The tribunal then directed Mr Deneham to the issue by reference to copies of the documents contained in the hearing bundle as part of the Respondent's evidence. At this point the tribunal then adjourned again to allow the Respondent and Mr Deneham the time that they needed to be able to address these inaccuracies. The Respondent was invited to notify the tribunal when they were ready to address these points.

16. On resumption of the hearing a short while later in the morning, Mr Deneham stated that they now understood the issues raised by the tribunal which could properly be explained as typographical errors and no more. Having received confirmation that the Respondent was now ready to proceed the tribunal invited Mr Deneham to make his case on the issues to be determined.

THE RESPONDENT'S CASE: SECTION 20 CONSULTATION

17. Mr Deneham submitted that there were two notices in issue, firstly Notice of Intention to carry out qualifying works and secondly the Notices of Estimates. It was the Respondent's case that the Notices of Intention were served on the tenants by post on the 18th April 2005. The Notices of Estimates were served on the tenants by post on the 30th June 2005.

18. It was common ground that at least some of the Applicants did receive these notices but the issue that the tribunal had to decide was whether all of the Applicants had received these notices.

19. Mr Deneham made reference to the evidence of Mr R Ahluwalia ("RA") contained in a witness statement made by him on the 14th October 2008. In this statement he referred to and exhibited Notices of Intention, which he stated were dated the 18th April 2004 given in respect of drainage works. RA described how the Notices of Intention were produced and served by Wood Management on behalf of the Respondent. They were sent to the Applicants by first class post. None of the Notices of Intention were returned undelivered. The witness statement of Niall McGuiness who was the supervisor of RA at the relevant time confirmed this system of dealing with service of notices.

20. Mr Deneham reminded the tribunal that it was common ground that some of the tenants had received Notices of Intention. A pole had been taken of the tenants as to who had received the notice and this revealed that six tenants admitted to having received both notices, five admitted that they had received one of the two consultation notices, two Applicants failed to respond and fifteen of the Applicants said that they had never received either of the consultation notices.

21. Mr Deneham then referred the tribunal to section 7 of the Interpretation Act 1978 which he submitted applied. It provided as follows,

'where an act authorises or requires any document to be served by post (whether the expression serve or the expression give or send or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected in the ordinary course of post.'

22. Mr Deneham submitted there is a statutory presumption that the Notices of Intention were delivered at the time at which the letters in which they were contained would be delivered in the ordinary course of post. What is the ordinary course post was a question of fact.

23. Mr Deneham accepted that the presumption of service under section 7 of the 1978 Act was rebuttable but the burden of proof was on the Applicants to establish that the Notices of Intention were not served on them. He reiterated that it was common ground that some of the tenants had received Notices of Intention. In his view there was no logical or other reason why the Respondent would send Notices of Intention to some tenants and not to others. The simple explanation was that the Applicants were not able to recall whether they received the notices or not. In this case Mr Deneham submitted that the section 7 presumptions applied. No evidence to rebut the presumption had been adduced. The bald denial by some of the Applicants that the Notices of Intention were not received was not sufficient evidence to rebut the presumption. Accordingly it was his submission that the LVT must find that the Notices of Intention were served on all the tenants of the building including the Applicants.

24. Mr Deneham made the same points in respect of the Notices of Estimates, which he asserted were served by the Respondent on the 30th June 2005. RA had exhibited the Notices of Estimates in his witness statement and confirmed that these were processed in exactly the same way as the Notices of Intention. In these circumstances the LVT must find that the Notices of Estimates were served on all the tenants of the building including the Applicants.

25. Mr Deneham then addressed the tribunal on the irreconcilable dates contained in the Notices of Estimates. Mr Deneham put these down to "simply typographical errors." He maintained that the Notices of Intention were in fact dated the 18th April 2005 and had been sent out by post on or about the 18th April 2005. The reference to the date of the Notices of Intention contained within the Notices of Estimates as being the 18th April 2004 was clearly just a typographical error and RA had repeated this error in his statement.

26. Mr Deneham accepted that the correct date in the Notices of Estimates should have been the 18th April 2005. This error had been repeated in all subsequent documents forming part of the Respondent's case. In support of his contention that this was simply a typographical error Mr Deneham sought to introduce a letter from Peter Overill Associates dated the 24th June 2005 addressed to RA. Peter Overill Associates were responsible for carrying out the tendering process and for overseeing the works. The content of the letter was a report to RA on the result of the consultation procedure. In his view this letter clearly showed that the consultation had taken place between April and June 2005 and not April 2004.

27. Mr Deneham then addressed the tribunal on the consequences of the errors contained in the Notices of Estimates. It was his contention that the error did not prejudice the Applicants in any way and any reasonable recipient of the notices would have understood the significance of them bearing in mind their contents and the context in which they were received. In particular that the purpose of the notices was to inform the tenants of the

landlord's intention to carry out major works to the property. Applying the principles set out in the case of Mannai Investments Co Limited v Eagle Star Life Assurance Company Limited, Mr Deneham asserted that the errors did not render the consultation process invalid.

SERVICE OF THE SECTION 20B NOTICES

28. The second issue was whether the requirements of section 20B of the Act in respect of items of service charge pre-dating the 16th August 2005 were satisfied.

29. Again the Respondent relied upon the evidence of RA. The Respondent's case in respect of the section 20B notices was the same as that advanced in respect of the Notices of Intention and Notices of Estimates. It was Mr Denham's contention that bearing in mind section 7 of the Interpretation Act 1978 the bald denial of some of the tenants that they had not received the section 20B notice was not sufficient and if the evidence of RA and Mr McGuiness were accepted then the Tribunal must find that the section 20B notices were served on all the tenants of the building including the Applicants.

30. Mr Deneham then called Mr McGuiness to give evidence. Mr McGuiness confirmed that he was employed as a senior property manager by the parent company of Wood Management Limited and that one of his functions was to manage RA who reported directly to him. Mr McGuiness confirmed that he had read RA's statement made on the 14th October 2008 in these proceedings and he confirmed that RA's description of the Wood Management system for service of Section 20 and section 20B notices was accurate. Although he was not personally involved in the service of notices in this case, he had no reason to doubt that the notices were sent. Mr McGuiness confirmed that Wood Management had an automated system of management and that notices were generated automatically by means of a mail merge system. There was a database in existence, which dealt with the delivery of service charge invoices. The same database was used to pull off names and addresses for the purposes of serving notices. The machine automatically printed off the relevant names and addresses and then merged these with a standard notice template. Thereafter the letters were signed and then sent down to the post room to be placed in envelopes. Thereafter the envelopes were franked and then collected by Royal Mail. His evidence was that he had no reason to believe that the system was not adopted in the present case although he stated that he had no direct involvement in the procedure.

31. In cross examination Mr McGuiness was shown a copy of an original Notice of Estimates, which had been received, by one of the leaseholders. When asked if the letter bore his signature Mr McGuiness confirmed that it appeared to. It was then pointed out to him that this statement contradicted his written evidence where he had confirmed that he had had no direct involvement with the procedure. Mr McGuiness was not able to provide an explanation as to this discrepancy other than to say that the procedure had been carried out a very long time ago and he had only a very vague recollection of that time. Mr McGuiness told the tribunal that Wood Management managed at least ten thousand properties at the relevant time and as a consequence it was not possible to be specific about this property.

APPLICANTS' CASE ON CONSULTATION AND SECTION 20B NOTICE COMPLIANCE

32. The central submission of the Applicants advanced by both Mr Wood and Mr Harrrity was that the vast majority of Applicants had not received any of the three notices. This was the case because they had simply not been sent to everybody. On their analysis of the facts, of the five Applicants who accepted that they had received both consultation notices, it was relevant that two of them were not living at the property but had been in contact with the landlord at the time over other matters. It was their contention therefore that there had been an error in the system maintained by Wood Management as a result of which not all of the leaseholders who actually lived at the subject property had been sent the notices. The count as far as the section 20B notices was even worse than that of the consultation notices. Only two Applicants accepted that a section 20B notice had been served on them.

33. The central plank of the Respondent's evidence was the witness statement of Mr RA, which Mr Harrity sought to discredit. He maintained there were a number of problems with this evidence, the central one being that RA was not at the hearing to be cross examined on the contents of his witness statement.

34. It had already been conceded by the Respondent that the witness statement of RA was incorrect insofar as it gave the wrong impression as to the date and year in which the consultation process had been conducted. The witness statement gave the impression that RA had sent the notices at a time when on his own admission he was not even an employee of Wood Management. Mr Harrity submitted that either the whole statement of RA was credible (which it was not) or it had to be discarded in its entirety. It was not right that the evidence of RA should be accepted in some respects but not in others. The plain fact of the matter was that RA's statement had errors in it, which in his opinion demonstrated that RA's evidence was not reliable and could not be relied upon.

35. The same was the case for Mr McGuiness' statement, which also contained inaccuracies. On the one hand he confirmed in his witness statement that he was not involved in the procedure for sending out the Section 20B notices but in oral evidence he accepted that he was involved because he had signed the notices. As a result Mr Harrity had serious concerns about the reliability of the evidence provided by Mr McGuiness and he invited the tribunal to disregard this.

36. Mr Harrity reminded the tribunal that the Respondent was not able to produce any contemporaneous records that the notices had in fact been served on all of the tenants in the building including the Applicants. Much had been made that a few tenants had received letters but it did not follow that all of the others must have received their letters. It could equally be taken that it was only those few tenants who had been sent the notices.

37. Much had also been made of the fact that during the consultation process the Respondent's managing agents had not received a single observation or objection. Mr Harrity suggested that one reason for this was that very few people had been sent the notices. He posed the question that if he was not expecting a letter from the Managing Agents how could he be expected to tell the Managing Agents if he had any issues?

38. As to the defects in the notice he did not accept that these were merely typographical errors; furthermore he felt that it was unfair that the tribunal had read the letter from Peter Overill Associates on the morning of the hearing. He accepted that the letter was only short

and straight forward to follow, but he still felt that the Respondent had had months to prepare for their case and that the letter should not be accepted by the tribunal.

39. If the tribunal accepted that the defects in dating were merely typographical then he had this point to say; if Wood Management were unable to even get the dates right on such important documents as Notices of Intention and Notices of Estimates, it was not difficult to imagine that they had made errors in selecting, addressing and posting letters to the requisite tenants.

40. In short he invited the tribunal to disregard the evidence of RA and Mr McGuiness or at least find it unreliable. Without this evidence there was no proof whatsoever that the consultation notices and section 20B notices had ever been sent to all of the Applicants and on this basis the tribunal should find in favour of the Applicants.

WERE THE COSTS OF THE DRAINAGE WORKS REASONABLE

41. The directions issued by the tribunal on the 26th August 2008 alerted the parties to the possibility that if it was found that the requirements of section 20 consultation procedure of the Act had been complied with in respect of the drainage works, then it may be necessary to determine whether the costs of those works was reasonable. The directions emphasised that the earlier tribunal had already determined that the works were necessary and were done to a reasonable standard, so that those issues were not open for further determination. In the event neither party addressed the tribunal in any length in relation to this issue. However, for the sake of completeness the tribunal determines that the costs were in themselves reasonable. The Applicants led no credible evidence demonstrating that the works could have been completed at a lower cost, and the earlier tribunal had already accepted the Respondent's evidence that they had engaged the lowest price contractor for the works, which were subsequently completed under budget.

CONTRIBUTION ISSUE

42. The particulars of the Applicants' case regarding the drainage work (insofar as the tribunal could understand it) was that they challenged the cost of the drainage works because the work was only for the benefit of the ground floor commercial premises; that they were only carried out because the commercial tenant had to take the freeholder to Court and that much of the work was done in the commercial areas only.

43. As a result of these un-particularised allegations the tribunal issued directions to enable the Respondents to answer the case put against them in respect of the contribution issue and for the Applicants to have a right of reply.

44. In the event the Applicants were unable to particularise their challenge on the contribution issue with any clarity. On the contrary Mr Deneham, in his lengthy submissions in this respect, established that the Respondents were under a contractual obligation to the Applicants to have the work carried out and that the Applicants were under a contractual obligation to contribute towards the work in the form of service charge. The tribunal accepted Mr Denham's assertion that the Applicants had simply misunderstood their obligations and that the Respondent, was subject to compliance with the consultation legislation, and if appropriate subject to service of section 20B notices, able to recover the entire reasonable cost of the drainage works from the Applicants and the other flat tenants.

SERVICE CHARGE ITEMS PRE-DATING THE 16th October 2005.

45. The earlier tribunal disallowed all of these costs solely because it found that the Respondent had not complied with section 20B of the Act. The issue of section 20B was remitted to this tribunal for determination. At the hearing on the 25th March 2009 the tribunal notified the parties that it wished to hear evidence and submissions on the payability and reasonableness of these Historic Costs. This was necessary because other than to disallow these costs on the grounds of failure to comply with section 20B of the Act, the earlier tribunal had not otherwise considered the reasonableness or payability of these items. Failure to do so would mean the possibility of a further challenge by the Applicants on the grounds that the items were not payable or reasonably incurred.

46. In order not to catch the parties by surprise, the tribunal directed that these issues would be considered at a later date, after directions had been given in relation to such matters. Preliminary directions were given in relation to these issues at the end of the hearing on the 25th March 2009 and the tribunal issued written directions on the 20th April 2009. These directions identified the charges in question and provided for a Scott Schedule to be generated, circulated and completed by the parties. At the second day of the hearing the tribunal considered the written responses to the Scott Schedule and also heard evidence from both parties in relation to these items. The tribunal's deliberations in respect of each contested item are outlined below.

TRIBUNAL'S DELIBERATIONS

(a) S.20 CONSULTATION AND SECTION 20B COMPLIANCE

47. Both of these matters can be taken together as the tribunal's deliberations in relation to both are largely the same. The tribunal had before it a clear but irreconcilable body of evidence as to the service of the S.20 consultation and section 20B notices. As a result it had to make up its mind which version of events it believed. On the one hand the Applicants assert that only five of them received both the consultation notices and only two a section 20B notice. On the other hand the Respondent asserts that all three notices were sent to all leaseholders of the building including the Applicants. No evidence was tendered as to whether the other twenty-three lessees in the building had received any of the notices.

48. On behalf of the Respondent Mr Deneham had, in summary, advanced the following submissions: -

    i) If the evidence of RA and Mr McGuiness was accepted then by virtue of section 7 of the Interpretation Act 1978, there was a statutory presumption that all the notices were delivered at the time at which the letters in which they were contained would be delivered in the ordinary course of post. What was the ordinary course of post was a question of fact, which was not crucial to the case. The burden of proof was on the Applicants to establish that the notice of intention was not served on them and that they had not discharged that burden of proof. The bald denial by some of the Applicants that the notices of intention were not received was not evidence sufficient to rebut that presumption.

    ii) The same points applied in relation to service of the section 20B notices. The Respondent relied upon the evidence of RA and Mr McGuiness and this

evidence combined with section 7 of the Interpretation Act 1978 meant that the tribunal must find that section 20B notices were served on all of the tenants of the flats in the building including the Applicants.

iii) The defects in the Notices of Estimates were only typographical and did not affect the substance of the notice. Any reasonable recipient of the Notices would have realised what information it was intending to impart and therefore the defects were not as such as to render the consultation procedure defective.

iv) It was accepted that some of the Applicants received both consultation notices and two Applicants received the section 20B notice. There was no logical or other reason why the Respondent would send notices to some tenants and not to others. The simple explanation was that the Applicants could not recall whether they received the notices or not. In this case the section 7 presumption applied and as there was no evidence before the tribunal to rebut the presumption, the tribunal must find that all notices were served on all tenants of the flats in the building including the Applicants.

v) None of the Applicants had taken any issue as to the form or content of the notices of intention and in any event the content of the notices complied with the statutory requirements.

49. On behalf of the Applicants Mr Harrity and Mr Wood had in summary advanced the following submissions: -

i) Evidence that some Applicants had received notices did not amount to evidence that all had received the requisite notices. The fact was that the vast majority had not received either of the consultation notices and in the case of section 20B notice only two leaseholders accepted that they had received this notice.

ii) The evidence of Mr McGuiness could not be relied upon. They pointed to the following key deficiencies:-

- Firstly on his own admission Mr McGuiness had no clear recollection of the events surrounding the service of any of the notices.

- Secondly he had confirmed that his firm had not retained any contemporaneous records which supported his assertion that service of all the notices had been effected.

- Thirdly his oral evidence conflicted with his written evidence. In written evidence he had asserted that he was not personally involved in the serving of the notices whereas in oral evidence, when confronted with a copy of the one Section 20B notice received by an Applicant, he conceded that the notice bore his signature.

iii) The evidence of RA also could not be relied upon. This evidence was central to the Respondents case and also contained inaccuracies. Furthermore RA was not at the hearing in which to explain the inaccuracies.

iv) If the evidence of Mr McGuiness and RA was disregarded there was nothing to substantiate the Respondent's assertion that notices had been sent to all Applicants.

50. On this core issue the tribunal has come to the conclusion that the totality of case put forward by the Applicants is more persuasive than the case put forward by the Respondent and finds on the balance of probabilities that other than in respect of flats 22, 26, 36, 50 and 52, S.20 consultation notices were not effectively served on the Applicants in respect of the major drainage works and only in respect of flats 22 and 42 were the requirements of section 20B of the Act met.

51. We have come to this decision because on the evidence put to us we have not been able to conclude with any degree of confidence that on the balance of probabilities the managing agents, 'properly addressed, pre-paid and posted letters containing the notices to the Applicants'. Without this evidence the tribunal was left with the assertion by the majority of Applicants that they had not received any of the notices.

52. We accept Mr Denham's eloquent submissions in relation to the application of the Interpretation Act 1978. However, in order for this section to apply it is necessary for the letters to be, 'properly addressed, pre-paid and posted to the Applicant'. We are not satisfied on the evidence put to us that this happened.

53. On this key issue the Respondent relies upon the evidence of RA and Mr McGuiness. However, in both cases this evidence is less than satisfactory. The written evidence of Mr McGuiness contradicted the evidence that he tendered in cross examination. We believe that Mr McGuiness answered the questions put to him honestly and that he did his best to assist the tribunal in arriving at the facts of the case. However, his evidence came over as confused and on his own admission he had no recollection of the case in question having pointed out that his company managed in excess of 10,000 properties at the relevant time. Having first contended that he had had no direct involvement with the case, he later changed his mind and accepted that his signature appeared on the section 20B notice. He could not explain why his written evidence had been inaccurate in this respect. He was also unable to explain the inaccuracies contained in the statement of RA and was also unable to explain the inaccuracies in the Notices of Intention. Because of these inconsistencies and his admission that he had no clear recollection of the events surrounding the purported service of the notices, the tribunal concluded that his evidence did not assist.

54. The tribunal also found that the written evidence of RA was less than satisfactory. His witness statement contained what was almost certainly an error. This error is contained in paragraph 9 of his statement where it is stated that the original Notices of Intention were dated 18th April 2004. It appears that they were in fact dated 18th April 2005. This paragraph also contains the statement that the, "*copy Notices of Intention were printed out by the Respondent's solicitors*". This statement is also unlikely to be correct as it is reasonable to assume that the template notices were on the computer system of the managing agents and not the Respondent's solicitors. Whilst these issues may have been capable of being explained in oral evidence, RA was not called to give evidence at the hearing. Shortly before the hearing the Respondent filed with the tribunal a 'hearsay notice' covering the statement of RA. A hearsay notice forms part of the civil procedure rules and applies where a party intends to rely upon a witness statement of a person who is not being called to give oral evidence. The rules set out the procedure to be followed when the credibility of that witness statement is to be challenged. However, these rules

do not apply to the tribunal which must arrive at its own decision as to the appropriate weight to be given to a witness statement when the person making the statement is not available at the hearing to be cross examined on the contents of his statement. In this case RA's statement is challenged and his evidence is central to the case advanced by the Respondent.

55. The problems in the statement of RA might have been resolved had RA been available for cross examination at the hearing. However he was not available and as a consequence the tribunal did not feel able to attach sufficient weight to his evidence such as to conclude therefrom that on the balance of probabilities the letters containing the notices were properly addressed to the Applicants within the meaning of section 7 of the Interpretation Act.

56. In arriving at its decision the tribunal also took into account that the Respondent had been unable able to produce contemporaneous evidence supporting its claim that the managing agents system for the service of notices worked and therefore had resulted in the Applicants being properly served. No copies of the documents had been kept; no evidence adduced that the Royal Mail had accepted letters on the days in question for posting to the Applicants; no evidence of compliance with the primary means of service as set out in the copy lease contained in the hearing bundle and no evidence that any other lessee in the building not being an Applicant had received their notices.

57. Bearing in mind the significance of the notices and the amounts of money involved the tribunal was surprised that no such evidence should have been adduced and we reject Mr Denham's assertion that the only possible conclusion that can be reached was that the lessees simply could not remember having received the notices. Another possibility is that the mail merge system described by Mr McGuiness failed as a result of which the letters and notices were not sent down to the post room for posting. Alternatively the wrong addresses might have been assigned to the letters. The tribunal reminded itself that the overwhelming majority of Applicants denied having received either of the two consultation notices. In the case of the section 20B notices only two Applicants accepted that they had received the notice.

58. Furthermore as pointed out by Mr Harrity, if the relevant person in Wood Management was unable to get the correct dates on the critical Notices of Estimates, it is not difficult to imagine that they could have made other errors in the addressing and the posting of these letters. Certainly the incorrect dates on the Notices of Estimates is a graphic illustration that all was not functioning well within the managing agents at the relevant time and that their quality control procedures had on at least one occasion failed.

59. Having regard to each and every reason stated above, the tribunal could not conclude, that on the balance of probabilities S.20 consultation notices and the section 20B notices were served on any of the Applicants other than those who had conceded that they had received them.

(b) ALLEGED DEFECTS IN THE FORM/CONTENT OF THE SECTION 20 NOTICES

60. It is accepted by the Respondent that the Notices of Estimates all contain an error. Instead of making reference to the Notice of Intention being dated the 18th April 2005, the Notices of Estimates all refer to the wrong date of the 18th April 2004. The question

for the tribunal to decide is if this incorrect date has the effect of invalidating the Notices of Estimates. If it does then the tribunal must find that the consultation procedure has not been properly complied with. On this issue the tribunal prefers the case put forward by Mr Deneham to the effect that the mistake was simply a typographical error and did not render the notice itself invalid.

61. In the opinion of the tribunal notwithstanding the error, any reasonable recipient of the notice with knowledge of the context would have understood that the Notice of Estimates related to an earlier Notice of Intention, which related to the same subject matter namely the drainage works. In the case of *Tudor v M25 Group Limited* The trial judge stated "*one ought to remember that these sorts of statutory provisions are aimed at providing a commercially fair result so that the recipients of notices are told what they have to be told but the object of the exercise is the giving of information and the defining of the issues, not the prescription of steps in a ritual dance of complex game one false step in which is intended to produce disaster*". The tribunal agrees with these sentiments and in this case we are satisfied that applying a purposeful approach to interpretation of the Notice of Estimates the reasonable recipient would have understood the information being provided and would not have been prejudiced by the error. As a result we find that the consultation procedure was validly carried out in respect of those Applicants, which have accepted that they received both notices.

(c) ARE THE HISTORIC COSTS RECOVERABLE BY WAY OF SERVICE CHARGE?

62. The parties submissions in respect of these charges are summarised in a 'Scott Schedule' filed with the Tribunal prior to the second days hearing. At the hearing Mr Deneham confirmed that the Respondents were prepared to make further concessions in the amount claimed so that in summary the Respondents were limiting their claim to four items as follows: -

- Peter Overill Associates fees,
- A.S. Frost Gardening
- T.M.D. Building consultancy charges;
- Interphone Limited charges.

63. The parties were given the opportunity to make their submissions in respect of the remaining contested items. After the hearing the Respondent's solicitors submitted a summary of the Respondent's position in relation to the Scott Schedule items as put to the tribunal at the hearing. This summary is annexed to this decision and the figures set out in the column entitled reduced claim are upheld and awarded by the tribunal subject to the specific points set out below.

64. The tribunal considered each invoice submitted by Peter Overill as set out in items 15.2, 15.6, 15.7, 15.11 15.13, and 15.18 of the Scott Schedule. With the exception of the invoices at 15.13 and 15.18 it was satisfied that these invoices related wholly and exclusively to the major drains works and had been reasonably incurred. It therefore allowed these invoices in full.

65. In respect of one invoice at 15.13 for £4,626.41 (page 99 of the hearing bundle) the account contained no detail of what it related to and in the absence of this detail the

tribunal could not be satisfied as to what it related to. Bearing in mind this doubt the tribunal disallows the entire invoice.

66. In respect of a second invoice at 15.18 for £3,198.06 (page 104 of the hearing bundle) the narrative contained two items, which could not be said to be wholly, and exclusively related to the drainage works. The tribunal therefore discounts this account by 67% making the total payable £1,055.36 (without disbursements.)

67. The invoice at paragraph 15.8 of the Scott Schedule relates to TMD Building Consultancy for £1,156.79. The invoice narrative reads, *'for attending site at the request of Glinett Davis on behalf of Swanlane Estates to meet with Peter Overill and inspect the property'*. No further narrative is included and the tribunal is thus unable to judge whether this invoice had been wholly and exclusively incurred in relation to the drainage works and/or whether it was reasonable to retain TMD Building Consultancy to carry out work. The Respondent had already retained Peter Overill Associates to provide project management services and therefore the tribunal could not understand why it was deemed necessary to instruct a second firm of chartered surveyors and project managers. In the absence of any further information, the tribunal disallowed this invoice in its entirety.

68. The invoice at 15.12 of the Scott Schedule related to Interphone Limited at £1,220.63. The Applicant's contend this should not be payable because the phone was hopelessly antiquated and unreliable. The Respondent contended that although the system maybe old, it was in place and that they had incurred an annual fee of £1,220.63 for the phone system, which was wholly recoverable under the lease. They had received no complaints from the Applicants in this respect and therefore they invited the tribunal to award the whole amount. The tribunal noted that the entry phone system had been considered by the earlier tribunal who had accepted the evidence of the Applicants that the system did not work properly. As a consequence they allowed only half the invoice. The tribunal upholds this finding of fact and therefore allows half of the current invoice under consideration so that the amount recoverable is £610.32.

69. The invoices at paragraph 15.10, 15.14 and 15.17 of the Scott Schedule relate to AS Frost Gardening. The Applicants contended that there were no gardens at the property and that therefore they should not have to pay any part of the invoice which related to gardening. They made no submissions in relation to the other services carried out by AS Frost gardening, which related to cleaning and the removal of items caused by fly tipping. Mr Deneham pointed out that although there were no gardens at the property there were flower containers planted out by the landlord from time to time. The fact that the plants were subsequently removed was not sufficient to mean that the cost of planting should not be recovered. Moreover it was not the landlord's fault if the plants had been removed or vandalized. The tribunal noted that this issue had been considered by the earlier tribunal who disallowed the fees of AS Frost gardening on the grounds that neither the cleaning nor planting had been carried out to a reasonable standard. The tribunal upholds this finding and disallows the current invoices under consideration for the same reasons.

SECTION 20C AND REIMBURSEMENT OF FEES

70. Both of these matters can be taken together as the tribunal's considerations in relation to both are largely the same. The legislation gives the tribunal discretion to disallow in

whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant costs to be taken into account when determining the amount of service charges payable. The tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.

71. The tribunal has concluded that it is just and equitable to make a section 20C Order in this case and it so orders. The Applicant's case has been largely made out and as a result a very significant percentage of service charge claimed has been found to be irrecoverable. The tribunal has some sympathy for the Respondent in that the issues have effectively come before not one tribunal but two. However, the fact that there has had to be a second hearing has not been caused by any fault on the Applicant's part. Rather the second hearing has come about because the earlier tribunal hearing was found to be procedurally unfair. That aside the Respondent's position would have found more favour with the tribunal had there been evidence before it that the Respondent had entered into constructive and helpful dialogue with the Applicants following the submission by the Respondents in April 2007 of a service charge account showing historic costs in excess of £160, 000 outstanding. No evidence was put to the tribunal that the Respondents had carried out any constructive dialogue in respect of the demand which was for a considerable sum of money and in respect of expenditure carried out a long time ago.

72. The Respondent points to the fact that they made concessions to the Applicants prior to the second day hearing and these concessions were not properly considered by the Applicants whose behaviour had been wholly unreasonable. They say that in unreasonably rejecting concessions that would have assisted the Applicants, the Applicants have "shown their colours" and as such the Tribunal should not make a section 20C order. The tribunal rejects these assertions. The concessions were tendered very shortly before the day fixed for the hearing and the lateness was such that it did not give the Applicants a sufficient period of time to consider what was on offer.

73. Having regard to all the factors in this case including the outcome of the proceedings and the conduct and the circumstances of the parties, the tribunal considers that it is just and equitable in the circumstances to make an order under section 20C in respect of all of the costs incurred by the Respondent in these proceedings and for the avoidance of doubt the costs incurred by the Respondents before the earlier tribunal.

Chairman_____
R.T.A. Wilson

Dated 17th June 2009

Swanlane Estates Ltd

LVT hearing 12th May 2009

Scott Schedule Respondent's Summary

			Conceded	Value	Reduced Claim
15.1	Block insurance premium	£10,182.85	100%	£10,182.85	
15.2	Peter Overill Associates	£1,786.00	100%	£1,786.00	
15.3	CPS Property Services	£1,429.31	88%	£1,254.11	£175.20
15.4	CPS Property Services	£146.88			£146.88
15.5	CPS Property Services	£63.16	100%	£63.16	
15.6	Peter Overill Associates	£3,754.13			£3,754.13
15.7	Peter Overill Associates	£573.28			£573.28
15.8	TMD Building Consultancy	£1,156.79			£1,156.79
15.9	CPS Property Services	£87.54	100%	£87.54	
15.10	A S Frost	£576.00			£576.00
15.11	Peter Overill Associates	£2,767.13			£2,767.13
15.12	Interphone Ltd	£1,220.63			£1,220.63
15.13	Peter Overill Associates	£4,626.41	50%	£2,313.21	£2,313.21
15.14	A S Frost	£360.00			£360.00
15.15	CPS Property Services	£102.52	100%	£102.52	
15.16	CPS Property Services	£142.47			£142.47
15.17	A S Frost	£240.00			£240.00
15.18	Peter Overill Associates	£3,198.06	67%	£2,132.05	£1,055.36
		£32,413.16		£17,921.44	£14,491.08

Scott Schedule Peter Overill Summary

			Conceded	Value	Reduced Claim
15.2	Peter Overill Associates	£1,786.00	100%	£1,786.00	
15.6	Peter Overill Associates	£3,754.13			£3,754.13
15.7	Peter Overill Associates	£573.28			£573.28
15.11	Peter Overill Associates	£2,767.13			£2,767.13
15.13	Peter Overill Associates	£4,626.41	50%	£2,313.21	£2,313.21
15.18	Peter Overill Associates	£3,198.06	67%	£2,132.05	£1,055.36
		£16,705.01		£6,231.26	£10,463.11