



Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00HN/LSC/2009/0654

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

Property: Admiral's Walk, Westcliff Road, Bournemouth BH2 5HF

Applicant: Admiral's Walk 2000 Limited

Respondents: The Leaseholders of All the Flats in Admiral's Walk

**Determination without a hearing in accordance with the procedure set
out in regulation 13 of the Leasehold Valuation Tribunals (Procedure)
(England) Regulations 2003**

Tribunal: Margaret Wilson

Date of the tribunal's decision: 16 December 2009

1. This is an application by a landlord under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the respondent leaseholders' liability to pay service charges for the proposed maintenance, repair and, if necessary, replacement of the component parts of the balconies of the flats in Admiral's Walk ("the block").

2. The landlord indicated in the application that it was content for the determination to be made on the basis of written representations and without an oral hearing. None of the leaseholders has asked for an oral hearing, and this determination is made on the basis of the written representations and without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. It is made by a single member of the Panel by virtue of paragraph 5 of regulation 13. By the tribunal's pre-determination directions dated 21 October 2009 the respondents were directed to respond to the application no later than 25 November 2009. One leaseholder, Neville Silver of Flat 48, has so responded in written representations dated 5 November 2009.

3. The landlord is a company owned by a majority of the leaseholders, which acquired the freehold of the block by collective enfranchisement in or about 2002. The block comprises 121 flats on what is said in the application to be eleven floors (although I observe with interest that, in a sample older form of lease provided to me, Flat 121 is said to be on the thirteenth floor, and in a sample newer form of lease of the same flat is said to be on the penthouse floor and fifth floor) and I assume it to have been built in or about 1972, when the original leases were granted. Each flat has an external balcony consisting of a cantilevered concrete slab surrounded by a glass screen, supported by upright one inch square steel stanchions embedded in the concrete slabs. (For this description I am grateful to Mr Silver.) Some of the stanchions are corroded and in need of repair or replacement

4. A minority of the flats remain held on the original leases ("the 1972 leases"). The majority are now held on new extended leases ("the 2003 leases").

5. The relevant provisions of the 1972 leases are these:

by clause 2(c) the tenant covenants:

Not to make any structural alterations or structural additions to the Demised Premises nor to remove any of the landlord's fixtures without the previous consent in writing of the Lessor and not to do anything to alter the external appearance of the Building nor do any external decorative or other work.

By clause 2(i) the tenant covenants:

At all times during the said term to keep all interior parts of the Demised Premises and the appurtenances thereof including all doors and windows in a good and substantial state of repair decoration and condition to the satisfaction of the Lessor's surveyor in all respects ...

By clause 3(f) the landlord covenants:

As often as may in the opinion of the Lessor's surveyor be necessary [to] repair and renew the roof and main structure of the Building and all external parts thereof and all drains gutters soakaways sewers pipes wires and cables and other appurtenances serving the Demised Premises in common with other premises and decorate the exterior of the Building in an appropriate manner.

By paragraph 10 of the schedule to the lease the tenant's stipulations include:

The windows including balcony fronts of the Demised Premises shall be cleaned once a month

The demised premises are not defined by reference to a plan and the balcony is not specifically mentioned save in paragraph 10 of the schedule.

6. The relevant provisions of the 2003 leases are these:

By clause 3.6 the tenant covenants:

To keep in good repair all parts of the property, and all additions to it, which this lease does not make the Landlord's responsibility

By clause 3.20 (f) the tenant covenants:

Not to cut maim alter or injure any of the principal bearing walls or timbers of the property nor any wiring plumbing pipes or cables of any kind laid in or through or under the property for the use and enjoyment of any other flat in the building and not to make any alterations in the plan and elevation of the property or in the principal or bearing walls thereof or in the external construction walls timbers elevations architectural appearance or exterior decoration of the property provided always this clause does not prevent the Tenant altering any wiring plumbing pipes or cables of any kind in the property and solely for the use and enjoyment of the property

By clause 4.4 the landlord covenants:

To provide the services listed in the Fourth Schedule for all the occupiers of the building ...

By virtue of the fourth schedule the services to be provided by the landlord include:

1. Repairing the roof, outside main structure and foundations of the building excluding the windows and window frames and balcony screens

3. Decorating the outside of the building when required and in any event at least once in every seven years unless manifestly not necessary

9. Improving the building, the common parts and grounds or any services supplied thereto and providing such additional services for the benefit of the Tenant and the occupiers of the other flats in the building as the Landlord shall from time to time think fit and generally managing and maintaining the building as a block of first class residential flats.

Again, the demised premises are not defined by reference to a plan and the balcony is not specifically mentioned.

7. With the application the landlord provided instructions from Richard Sedgley & Co, solicitors, to counsel to advise on the question on which this determination is sought, and the opinion of Derek Marshall of counsel dated 22 August 2008, together with drawings showing the design of the balconies. Counsel concluded that under the 1972 leases the responsibility for the repair of the stanchions and the balcony screens falls on the individual leaseholders because the balconies form part of the demise. In relation to the 2003 lease Mr Marshall's opinion was that the leaseholders were responsible for the maintenance of the balcony screens "if not the stanchions and metalwork" because paragraph 1 of the fourth schedule excludes repair of the balcony screens from the services to be provided by the landlord. He does not otherwise specifically address responsibility for repair of the stanchions under the 2003 lease.

8. In his letter dated 5 November 2009 Neville Silver submits that, at any rate under the 2003 lease, such responsibility falls on the landlord. He says that external steelwork such as the stanchions requires protection from the elements, generally by the application of special paint at frequent intervals, usually of three to four years, particularly in coastal areas, in order to prevent rust. He says that the landlord's obligation under paragraph 3 of the fourth schedule to decorate the outside of the building includes the obligation to

paint the stanchions, and that the stanchions were last decorated in 1998 and to a specification which was inadequate to prevent rust.

Decision

9. I am quite satisfied that it is the landlord's obligation under both forms of lease to decorate, repair and, if necessary, renew the stanchions, that the renewal of the stanchions, or any of them, to a design similar to the existing would constitute a repair and not an improvement, provided that the original stanchion which was renewed was in a state of disrepair. I am also satisfied that if, in the course of renewing or repairing a stanchion, a glass screen was unavoidably broken, its replacement would also be the landlord's responsibility under both forms of lease notwithstanding the provisions of paragraph 1 of the fourth schedule to the 2003 lease.

10. In the first place I consider it appropriate, unless driven by the plain words of the lease to a contrary conclusion, to give a common sense construction to the leases, and common sense strongly suggests that each balcony is part of the structure and exterior of the block which ought to be maintained by the landlord in a planned and coherent way. To require individual leaseholders to repair and replace any part of a balcony, work which would probably require scaffolding, would be to my mind almost unworkable, and therefore is a construction to be avoided if possible.

11. I do not consider that such an unfortunate conclusion is inevitable. Indeed I am satisfied that the plain meaning of each lease, taken as a whole, is that the obligation to decorate, repair and, if necessary renew, all parts of the balconies falls on the landlord, with the exception of the glass of the balconies of those flats held on 2003 leases, although, as I have said above, if, in the course of renewing the stanchions or any other part of the balconies of such flats the glass screens are broken their replacement will be the landlord's responsibility.

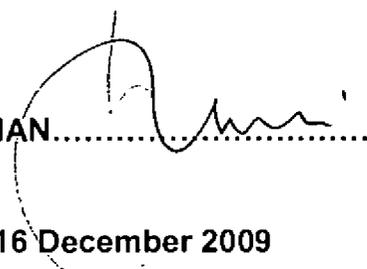
12. In the case of the 1992 leases, I am satisfied that the tenant's covenant in clause 2(c) *not to do anything to alter the external appearance of the Building nor do any external decorative or other work* prevents the tenant from lawfully repairing or renewing the stanchions or any other part of the balcony attaching to his flat and strongly suggests that to do so is the landlord's obligation. I do not consider that the tenant's covenant in clause 2(i) to *keep all interior parts of the Demised Premises and the appurtenances thereof* has the effect of rendering individual tenants liable to maintain their balconies, an obligation which would be inconsistent with clause 2(c) as well as the landlord's obligation in clause 3(f) *as often as may in the opinion of the Lessor's surveyor be necessary [to] repair and renew the roof and main structure of the Building and all external parts thereof ... and ... [to] decorate the exterior of the Building in an appropriate manner*. I do not consider the tenant's obligation, in paragraph 10 of the schedule, to clean the balcony fronts is in any way inconsistent with the landlord's obligation to repair and maintain the balconies. Indeed, if anything, the absence of an obligation on the tenant to decorate and maintain the balcony suggests that the obligation is not his.

13. In the case of the 2003 leases, I am also satisfied that the obligation to maintain, repair and, if necessary, renew the stanchions and all other parts of the balconies with the exception of the screens (otherwise than where broken in the course of works carried out by the landlord in pursuance of its covenant to maintain, repair and renew the other parts of the balconies) falls on the landlord. To my mind this is clear not only from the tenant's covenant in clause 3.20(f) *not to make any alterations in ... the external construction ... elevations architectural appearance or exterior decoration of the property* but also from the landlord's covenants in clause 4.4 and the fourth schedule to *repair the roof, outside main structure and foundations of the building excluding the windows and window frames and balcony screens and to decorate the outside of the building when required ...*

14. I am not assisted by the unreported decision of the Court of Appeal in *Petersson and others v Pitt Place (Epsom) Limited* [2001] EWCA CIV 86, which related to an entirely different form of lease and very different facts.

15. I am in no doubt that the replacement of the stanchions with similar stanchions, albeit of a modern specification, will be a repair and not an improvement, provided the original stanchion is in disrepair, and the cost, provided it is reasonable in amount and the standard of the work reasonable, will be recoverable as a service charge under both forms of lease.

CHAIRMAN.....

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by several smaller, connected loops and a final horizontal stroke.

DATE: 16 December 2009