CHI/21UC/LVL/2010/0003

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LANDLORD AND TENANT ACT 1987 SECTION 35

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

1 ASHBOURNE COURT, BURLINGTON PLACE, EASTBOURNE, EAST SUSSEX BN21 4AX

Applicant: Mr J Manek (Lessee)

Represented by: In person

Respondent: Ashbourne Court (Eastbourne) Ltd (Landlord)

Represented by: Mr Stephen Holt, solicitor, of Messrs Mayo Wynne Baxter

Date of application: 26 February 2010

Date of hearing: 8 June 2010

Members of the Leasehold Valuation Tribunal:

MA Loveday BA Hons MCI Arb

Mr B Simms FRICS MCI Arb

INTRODUCTION

1. This is the hearing of a preliminary issue on whether the Tribunal has jurisdiction to vary the provisions of a lease under s.35 of the Landlord & Tenant Act 1987. The application is made by Mr J Manek, who is the lessee of Flat 1, Ashbourne Court, Burlington Place, Eastbourne West Sussex BN21 4AX. The respondent is the freeholder, Ashbourne Court (Eastbourne) Ltd, a company owned by some (but not all) of the leaseholders at Ashbourne Court. The application is dated 26 February 2010 and directions were given on 4 March 2010 and 29 April 2010. A hearing was held on 8 June 2010, at which the applicant appeared in person and the respondent was represented by Mr Stephen Holt of Mayo Wynne Baxter solicitors.

THE STATUTORY PROVISIONS

2. The relevant statutory provisions under Part IV of the 1987 Act are:

Applications relating to flats
35 Application by party to lease for variation of lease

(1) Any party to a long lease of a flat may make an application to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—
(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.
(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—
(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and
(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

THE LEASE AND THE PROPOSED VARIATIONS

3. By a lease dated 25 March 2000, the flat was demised by the respondent to Rosemary Probert for a term of 999 years from 29 September 1999. The material terms of the lease are set out in the Schedule to this determination.

4. The variations proposed by the applicant are set out in two documents. The statement of case states that the lessee is "compelled to pay one-tenth of the balance of cost of the maintenance of the garage." The applicant sought the deletion of this obligation. Secondly, on 24 April 2010, the applicant served a further request for six other variations to be made. Those additional variations are set out in the schedule to this determination.

THE RESPONDENT'S SUBMISSIONS

5. The respondent relied on a statement of case filed on 12 May 2010 and on a skeleton argument document filed on 1 May 2010 which set out his arguments in tabular form, a skeleton argument filed on 28 May 2010.

6. The respondent first referred to previous decisions of other Leasehold Valuation Tribunals in ***Povey & Dodd v Broomleigh HA*** (5 May 2004) LON/00BC/LSC/2003/0016 and ***Montioni v Margolies*** (15 June 2006) LON/00AW/LAC/2006/0003, which both considered the meaning of *"fails to make satisfactory provision"* in s.35. In the former, the Tribunal stated that:

> *"It is not within the jurisdiction of the tribunal to make variations to leases merely because one party to a lease becomes dissatisfied with the terms. The power to vary is intended to be used only where the lease in question fails to make satisfactory provision in respect of (to put it shortly) repair and maintenance of the flat, insurance, repair or maintenance of installations, the provision or maintenance of services, the recovery of expenditure by one party from another, the computation of service charges and other matters prescribed by regulations."*

In the latter, the Tribunal stated that:

> *"The purpose of section 35 of the 1987 Act is to rectify leases which are inadequately drafted with the consequence that they may prove unworkable. However the Tribunal's jurisdiction only extends to the specific matters set out in section 35 and our power to vary a lease may only be exercised where the lease fails to make satisfactory provision with respect to certain matters. The Applicant accepted that the only relevant ground for applying to vary her lease was under section 35(2)(f). However the 1987 Act sets out specific factors for determining whether satisfactory provision is made in relation to the service charge and the Tribunal's power extends only to the computation of the service charge if a lease fails to make satisfactory provision if the aggregate of the service charge contributions of the tenants exceeds or is less than the landlord's expenditure."*

7. It was submitted that the power to vary could only be exercised where a lease was inadequately drafted with the consequence that it may prove unworkable. The Tribunal's powers may only be exercised where a lease fails to make satisfactory provision with regard to a specific ground. In his oral submissions, Mr Holt went so far as to submit that a lease could "make satisfactory provision" even if it was "grossly unfair" to one of the parties. The construction of these words was assisted by the

factors listed in s.35(3A) and (4). In particular, s.35(4) dealt with the computation of charges to ensure that lessees paid 100% of the relevant costs incurred by the landlord in providing services.

8. The garages. The respondent submitted that the provisions were entirely workable. The garages were included in the general definition of "the Building" in clause 1(5) of the lease. Maintenance and repair of the blocks was therefore covered by clause 4(2)(b) of the lease. Five of the garages were let to non-residents, and the leases of those five garages required the occupiers to contribute towards repairs, but that did not make the provisions of the lease of the flat unworkable. In effect, the applicant simply wanted his lease drafted differently.

9. Maintenance of the common parts. The respondent submitted that the provisions of clause 4(2) of the lease were entirely workable and made satisfactory provision for maintenance and repair. They required the landlord to repair and maintain parts of the property "when and as necessary". In his oral submissions, Mr Holt stressed that these provisions provided flexibility. If it was necessary to replace the carpets every year, then the lessees could enforce this obligation.

10. Security. The respondent submitted that Ashbourne Court was in the centre of Eastbourne and was an open plan purpose built block of flats surrounded by similar blocks. There was history of the applicant requesting security improvements, but these had previously been rejected by both the respondent and the courts. The amendment requested by the applicant did not fall within s.35(2) of the Act and there was no obligation on the landlord to fence or make erect additional boundary features. The fact that the applicant wanted a security fence did not mean the lease was unsatisfactory or unworkable. A security fence would be an improvement.

11. Water mains emergency cut off. The respondent stated that clause 4(2)(e) of the lease makes provision for the landlord to be responsible for the maintenance and repair of water tanks, water pipes, conduits, ducts sewers, drains and all other water, sewerage and drainage installations. Individual lessees were responsible for repairs to conduits

and pipes within the floors and walls forming part of their demise. Furthermore, the landlord was required to keep a comprehensive policy of insurance in place by clause 4(6) of the lease. Mr Holt submitted that these provisions were satisfactory.

12. Budget. The applicant referred to clauses 3(2), 3(3) and 3(4) of the lease which set out a perfectly standard service charge accounting machinery. There was no need to specify a date by which the certified accounts should be provided. It was a satisfactory provision to require them to be produced "as soon as practicable" after the end of the service charge year.

13. Minutes. Clause 3(4) of the lease has already been referred to. The applicant wished to have regular residents meetings. However, it had proposed that clause 3(4)(c) should be varied to require the landlord to serve minutes of AGMs and EGMs on the lessees within a week of the meeting. This was misconceived because the applicant was confusing company law with landlord and tenant law. These suggestions did not fall within any part of s.35(2) of the Act.

14. Reserve Fund. The applicant submitted that there is no statutory requirement to have a reserve fund and the absence of such a fund did not fall within s.35(2). In any event, the lease did make provision for a reserve fund at clause 3(7) of the lease "at such level as the landlord shall reasonably consider desirable". There has always been a reserve fund and this has been discussed with the residents and approved at the Annual General Meeting of the respondent.

15. Section 20C. The applicant had applied for an order that none of the costs incurred by the landlord in connection with the tribunal application should be added to the service charges.

16. Costs award. The respondent applied for an award of costs under paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Mr Holt did not produce any written evidence of his costs incurred but confirmed that the respondent's legal costs exceeded the maximum of £500 which he could claim. The

applicant had acted "unreasonably". The application was misguided and the question of jurisdiction under s.35(2) was always an obvious problem. Indeed, the procedural chairman had raised the matter at the Pre-Trial Review.

THE APPLICANT'S SUBMISSIONS

17. The applicant relied on a document dated 1 May 2010 which set out his arguments in tabular form, a skeleton argument dated 7 June 2010 and oral submissions at the hearing.

18. The applicant submitted that the only issue for this Tribunal was jurisdiction, and not the merits of the application to vary. He then dealt with the seven proposed variations in turn.

19. Garages. The Particulars to the lease of flat 1 defined the "Property" as Ashbourne Court Burlington Place Eastbourne East Sussex which is more particularly delineated and shown edged red on the attached site plan marked 'A'". In turn, the lease plan 'A' included eight garages to the rear of the property within the red edging. Clause 1(5) defined the 'Building' as including "(where the context so admits) ... all garage blocks". By clauses 3(1), the lessee was obliged to pay and contribute towards the landlord's Annual Maintenance Cost and this included a contribution towards the landlord's costs of maintaining the garages: see clauses 3(6) and 4(3).

20. The applicant relied at the hearing on s.35(2)(e). The words "fails to make satisfactory provision" in s.35(2) was equivalent to the words "makes unreasonable provision" for the matters set out there. The applicant submitted that the provision was unsatisfactory because:
    (a) The provisions were a hotch pot and ramshackle. They were not set out in a "scientific, logical way".
    (b) The applicant obtained no utility from the garage block.
    (c) The 2008 service charge accounts for Ashbourne Court included expenditure of £474 on "garage guttering and electrical repairs". If the lease was not changed, that expenditure could well increase substantially.

21. Maintenance of the common parts. The applicant sought to add wording to clause 4(2)(d) of the lease to clarify the landlord's maintenance obligations, and in particular to specify a detailed cycle for painting, carpeting etc. The applicant did not state in his schedule of 1 May 2010 which subparagraph of s.35(2) he relied upon. However, he submitted that the lease failed to make satisfactory provision for the safety and security of the common parts of the building containing the flat under s.35(3) – which implied that he brought his application under s.35(2)(c) and/or (d). He argued that the property was in a poor state of repair. The lease as presently worded did not prevent dust, allergies, infection and filth in the common parts because it only required the landlord to maintain and repair "when and as necessary".

22. Security. The applicant relied on s.35(2)(c) and (d) of the Act and in particular on s.35(3). One of the factors relevant to s.35(2) is the "safety and security of the flat and its occupiers". He stated that there had been a significant increase in crime rate and the social environment was very different from the time when the lease was first granted. There was now a serious security problem at the property and referred to police reports of robberies and other serious incidents. The lease was so inadequately drafted that the ground floor flats acted as a security buffer for the remainder of the property. It was unfair for flats which suffered disproportionately from crime to pay the same maintenance contribution as other flats. Other blocks nearby had erected security fencing which was not intrusive. He therefore sought to add to clause 4(2) of the lease a new provision which required the landlord to erect security fences and other features.

23. Water mains emergency cut off. The applicant relied on s.35(a) in this regard. He submitted that the lease failed to make satisfactory provision for flooding due to broken pipes or faulty installations in the flats while the property was unoccupied. There was also no insurance cover for this. In his oral submissions the applicant confirmed that his main concern was that there should be an individual stopcock for each flat on the exterior because it would be a disaster if there was a flood inside. His proposed variation was designed to require the landlord to install stopcocks

throughout the building. The provisions referred to by the respondents did not address the issue of a lack of individual stop cocks for the flats. When a serious leak happened, it was impossible to isolate the supply to the individual flat, contents were ruined and litigation often ensued. Stop cocks were a basic feature of modern building standards.

24. Budget. This was a short point. The lease at clause 3(4) required the landlord to supply the certified Annual Maintenance Account in every year "as soon as practicable after the 31st day of December ... in every year". This provision was too vague and it therefore failed to make satisfactory provision for recovery expenditure under s.35(2)(e). The lease was inadequate and therefore unworkable about how and when the accounts are prepared. The lease ought to include a specified deadline, and the applicant suggested that the account should be ratified by a company EGM held no later than 10 months after the end of the accounting year.

25. Minutes. The applicant submitted that this fell within s.35(2)(4). The lease did not provide for meetings to be held periodically with lessees. They needed regular meetings or they would be unable to relate how budgets were set up and which costs they have provided for. Minutes of meetings also needed to be circulated on a regular basis. The lease was inadequate and therefore unworkable about how timely disclosure is provided to leaseholders for their quarterly payments.

26. Reserve Fund. The applicant relied on s.35(2)(f). The lessees of Flats 4 and 2 were set to sell their flats and move without having contributed to major pending costs such as the roof and lift renewal. Others had already done so. A Reserve Fund would provide a much needed remedy against this. The lease failed to make satisfactory provision for computing the service charge in this respect. In his oral submissions, the applicant accepted that there had been a Reserve Fund, but the landlord had failed to collect moneys and the Reserve Fund did not operate. Changes were needed to make the Fund more effective. He proposed variations to establish a fund over ten years with moneys allocated to specific projects.

27. Section 20C. The applicant submitted that the landlord had created a climate of hatred. Members simply voted against any of the applicant's proposals as a block at the meetings of the Company. It was not reasonable to employ solicitors for this matter, it could have been dealt with by a director of the company or the managing agent. They had recklessly incurred the costs. The landlord had refused to meet the applicant to discuss matters.

28. Costs award. The applicant submitted that no order should be made under paragraph 10(2)(b) of Schedule 12 to the 2002 Act. He had not acted "unreasonably". The landlord had neglected the lease for many years and he had tried to negotiate. When he consulted a solicitor, he had been told that the lease was unsatisfactory. He tried to economise on costs by bringing all the applications for variations to the Tribunal at one go.

THE TRIBUNAL'S DECISION

29. At the forefront of the submissions made by both parties was the question of the proper approach of the Tribunal to variations to a lease under s.35. The applicant submitted that the words "the lease fails to make satisfactory provision" confers a wide discretion on the Tribunal. The respondent contends that the words restrict the Tribunal's discretion.

30. Plainly, the phrase cannot involve a subjective test. As Mr Holt pointed out, almost any provision in a lease is not "satisfactory" from the point of view of a party with the burden of that covenant whilst being "satisfactory" from the point of view of the party with the benefit of that covenant. We agree with the words of the previous Tribunal in ***Povey & Dodd v Broomleigh*** to that effect. The test must be an objective one, namely whether the lease fails to make "satisfactory provision" from the point of view of both parties (and indeed from the point of view of other lessees and persons with an interest in the building).

31. Some assistance is also given by looking at other statutory provisions. One can compare and contrast the phrase used in s.35 with paragraph 3 of Schedule 11 of the

Commonhold and Leasehold Reform Act 2002. In the 2002 Act, variations are permitted to administration charge provisions where the "*charge specified in the lease is unreasonable*" or "*any formula specified in the lease ... is unreasonable*"). This tends to suggest that a perfectly workable administration charge provision may be varied simply because the charge is unfair to one or other of the parties. More significantly, it should be noted that s.35 is only the first of at least two stages which the Tribunal must go through before making any variation. Section 35 only deals with the grounds for making a variation. The discretion given to the Tribunal is exercised under s.38, and it is at that stage that parliament directs that matters such as prejudice to the parties is to be considered: see s.38(6) and (7). Some assistance is also given by s.35(4), which as Mr Holt points out, deals with whether a service charge scheme is 'workable', rather than the merits of the provision.

32. The Tribunal may not go so far as to agree with the submission made by the respondent that a lease can make "satisfactory provision" for something even though it is grossly unfair to one party or the other. However, all the above considerations tend to suggest that the phrase "fails to make satisfactory provision" should be construed narrowly and that the Tribunal has no general discretion under s.35 to vary a lease simply because its provisions could be improved upon. A lease only fails to make "satisfactory provision" for something if the relevant clause of the lease was initially unworkable or impractical or it had subsequently become so as a result of developments since the grant of the lease (e.g. the construction of new parts of the building, the destruction of parts of the building).

33. In the light of this conclusion, we turn to each of the individual variations proposed by the applicant in turn.

34. <u>The garages</u>. The applicant relies on s.35(2)(e). The machinery for recovering these costs is perfectly workable and transparent: The garages are plainly included in the lease plan and the definition of "the Premises" in the Particulars of and the First Schedule to the lease. Although one has to look to several provisions of the lease to establish that the lessee is liable to contribute to the relevant costs of maintaining the

garages, this is not uncommon with leases. The applicant's criticism of the form of the provision is therefore not accepted. In any event, the main objection is to the principle of charging for maintenance and repairs to garages which provide no utility for the lessee. However, this is a common situation where there are leases of flats on estates or in buildings with non-residential parts. The fundamental basis of a service charge is that lessees agree to share costs according to specified contributions irrespective of the individual benefit which they obtain from those services. Finally, s.35 is not intended to provide protection for a lessee against excessive service charges – the applicant is protected by s.19 of the Landlord and Tenant Act 1985 in this respect. The Tribunal therefore considers that the lease makes satisfactory provision within the meaning of s.35 of the Act with respect to the recovery of expenditure on garage maintenance and repairs. It follows that there is no jurisdiction to make any order under s.38 of the Act.

35. Maintenance of the common parts. The applicant appears to rely on s.35(2)(c) and/or (d) and he wishes to specify in greater detail the landlord's maintenance obligations in clause 4(2)(d) of the lease. The objection is principally to the requirement for the lessor to paint, repair etc "as and when necessary". However, the Tribunal considers that clause 4(2)(d) is perfectly workable in its present form and that such provision does make "satisfactory provision" for repairs etc. Although many leases do specify painting and maintenance cycles, this does not mean that a lease which does not specify a cycle fails to make satisfactory provision for such matters. Indeed, there are advantages to having a less prescriptive and more flexible approach to maintenance cycles. This is perhaps best illustrated by the applicant's own proposed lease variations which would require the landlord to re-carpet the common parts every twenty five years. In most cases, this would require the landlord to maintain the carpets in the common parts well beyond the end of their useful life rather than having the flexibility to replace the carpets if and when required.

36. Security. The applicant relies on s.35(2)(c) and (d) of the Act. One of the factors relevant to s.35(2) is the "safety and security of the flat and its occupiers": see s.35(3). However, it should be noted that the qualification in s.35(3) does not relate to the

maintenance of the flat. It is a factor relevant to whether a "reasonable standard of accommodation" is provided, and that is only relevant to the consideration in s.35(2)(c), namely whether the lease fails to make satisfactory provision in respect of "the maintenance of any installations in the building". In short, the Tribunal cannot vary a lease on the ground that the lease fails to make adequate provision for the safety and security of the residents. It may only do so if the lease fails to make satisfactory provision for the maintenance of installations such as fire alarm systems (in fact, in this case the lease does make provision for maintenance of fire safety equipment – see clause 4(2)(g)). There is no statutory power to require the landlord to install fences or improve security. Moreover, it should be noted that clause 4(8) of the lease provides some basic provision as to security – the landlord is required to allow the lessee quiet enjoyment of the flat. The Tribunal does not therefore have jurisdiction under s.35 of the Act to order improvements in security arrangements in the building.

37. Water mains emergency cut off. On this, the lease includes standard and comprehensive provisions as to the repair of water installations as described by the landlord. These are, in themselves, satisfactory. Indeed, the applicant does not suggest that they are not. What is said is that the lack of a specific requirement to install individual water stopcocks makes the provisions unsatisfactory. No doubt individual stopcocks would be desirable, but is that the test in s.35(2)(a) or indeed s.35(c)? The Tribunal considers that it is not. Both these subsections deal with "repair" and "maintenance". It is trite law that neither of these words require improvements to the property. The upgrading of the water systems to install individual water stopcocks to each flat would be an improvement. Moreover, the lease includes other provisions which protect the lessee from flooding, namely the repairing obligations mentioned above. These are satisfactory, even if they do not go so far as to require improvements to the water systems to provide a 100% guarantee against flooding.

38. Budget. The lease includes standard service charge provisions at clause 3. The only matter complained of is that the certified annual accounts were to be produced "as soon as practicable" after the end of the service charge year. The applicant wishes to

have a cut off date. Again, such a cut off date may well be desirable, but the machinery is both commonly found in leases of this kind, and it is entirely workable without any amendment. The provision as currently worded makes satisfactory provision for the recovery of service charges under s.35(2)(e).

39. Minutes. The lease does not require minutes of meetings of the company to be circulated to residents. However, as the respondent points out, there is some confusion between the respondent in its capacity as landlord and the company as a corporate body. A provision such as that suggested by the lessee would be wholly unworkable if the respondent chose to assign the reversion to an individual or a corporate body which did not hold AGMs. However, taking the applicant's criticisms more broadly, does the lease fail to make adequate provision for informing lessees of management decisions? Plainly, the lease does not make any provision about these matters, apart from the accounting requirements in clause 3. However, the Tribunal does not consider that the lease fails to make satisfactory provision in this respect. Such a provision would be unusual in a lease of this kind. There are also statutory rights to information under, for example, the Landlord and Tenant Act 1985 ss.20 and 21. Finally, the provision of information does not appear to fall easily within any of the subsections to s.35(2). It is not really related to the "computation" of service charges, since the charges could be computed without giving the lessees any information at all – no matter how much such a practice would be deplored. The Tribunal therefore cannot therefore make the variation sought.

40. Reserve Fund. The lease includes a comprehensive provision for a Reserve Fund at clause 3(7) of the lease. There is evidence that contributions are made to the fund (see for example the maintenance accounts for 2008 in the papers before the Tribunal which include a Maintenance Fund of £15,400 and £15,757 in 2008 and 2007 respectively). The applicant contends that the present wording fails to make satisfactory provision for the computation of the charge because it does not identify individual items of expenditure and specify that the sums must be spent within 10 years. These proposals are in all probability unworkable. However, the relevant point is that clause 3(7) of the lease is workable in its present form and the Tribunal

considers that it is satisfactory. Again, the wording may well be improved upon, but that is not the statutory test.

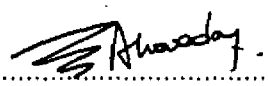
41. Section 20C. It is unclear whether any provision of the lease allows the landlord to recover its costs in connection with proceedings before this Tribunal. However, if such costs are recoverable, the Tribunal considers that it is not just and equitable to make an order under s.20C of the Act, having regard to the guidance given by the Lands Tribunal in ***Tenants of Langford Court v Doren*** LRX/37/2000. The respondent has succeeded in relation to the main issues. Furthermore, the landlord has not acted improperly or disproportionately in connection with matters before the Tribunal. These are complex issues which merited representation and professional advice. The landlord has provided documentation and statements of case as required. Moreover, the landlord is a lessee-owned freehold company and the costs would otherwise fall on the lessee shareholders.

42. Costs order. The starting point under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 is that no order should be made for costs. The jurisdiction under paragraph 10(2)(b) is an exception to this. The applicant is in person, and he was entitled to bring this application. Although he has failed in what has been described as a matter of jurisdiction, it is perhaps more properly described as a preliminary issue. The applicant has certainly served numerous documents, some of which added to the time taken to determine the matter. However, ultimately, the Tribunal does not consider that the application was wholly misconceived nor that the applicant has behaved in a way which should be marked by a costs sanction. The Tribunal therefore makes no order under Schedule 12 to the 2002 Act.

CONCLUSIONS

43. For the reasons given above, the lease as currently worded makes "satisfactory provision" for each of the relevant matters under s.35(2) of the Landlord and Tenant Act 1987. The Tribunal therefore does not have jurisdiction to vary the provisions of the lease.

44. No order is made under s.20C of the Landlord and Tenant Act 1985 or under paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.



Mark Loveday BA(Hons) MCIArb
Chairman
9 July 2010