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London Leasehold Valuation Tribunal File Ref No. **LON/OOAB/LSC/2010/0182**

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises	**The Committee members were**
Flats 1, 2, 3 and 4,	Mr Adrian Jack
97 Temple Avenue,	Mr Frank Coffey FRICS
Dagenham RM8 1NB	Mr Owen Miller

The Landlord: **Maxiwood Ltd**

The Tenants: **Terra Investments (GB) Ltd (Flat 1); Ronald Francis (Flat 2); Mr and Mrs B Akinde (Flats 3 and 4)**

Procedural

1. By an application received 11th March 2010 Mr Francis sought determination of his liability in respect of the service charge years 2006 to 2010. (The service charge year, it was agreed at the hearing, is the calendar year.) Subsequently the tenants of the otherthree flats in the block have been added as applicants.The Tribunal heard this matter on 1st July 2010. Mr Francis and Mr Akinde appeared on their own behalves and on behalf of the other tenants. Mr Brotherton appeared on behalf of the landlord. Mr Brotherton manages the property on behalf of his company, Crestcourt Properties Ltd. In turn he is one of eight shareholders in Maxiwood, the landlord.

The law

4. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.

(3) for this purpose

(a) costs includes overheads and

(b) costs are relevant costs in relation to a service charge whether they are

incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred; and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to---

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable."

The issues

5. The property comprises a house converted into four flats. Each flat contributes a quarter to the service charge. Final accounts have been prepared for the years 2006-2009. The amounts in the accounts are as follows:

2006	
Insurance	£783.13
Repairs: clearance	256.75
Management fee	300.00
	£1,339.88
2007	
Insurance	£820.54
Management fee	360.00
	£1,180.54
2008	
Insurance	£895.95
Repairs: Cuttle	881.25
Surveyors' fees: Stuart Radley	440.63
Management fee	500.00
	£2,717.83
2009	
Insurance	£955.74
Asbestos survey: Tersus	276.00
Fire risk survey: BFA	253.00
Surveyors' fees: Stuart Radley	603.75
Management fee	500.00
	£2,588.49
2010 (Budgeted figures)	
Insurance	£975.00
Gardening	800.00
Common parts refurbishment (including fire risk improvements)	7,000.00
Surveyors' fee	600.00
Management fees	625.00
	£10,000.00

Insurance

6. The tenants did not dispute the figures for insurance, so we disallow nothing.

Management fees

7. Mr Brotherton's evidence was that Crestcourt was his company. It managed a number of properties, but did not cross the VAT threshold. He worked for the company with the assistance of a part-time secretary. He was aware of the existence of the RICS Code, but had not read it and was not familiar with it. He had no written contract with Maxiwood for the management, so there was no written statement of the services Crestcourt provided or the amount chargeable by Crestcourt. His billing was based on his assessment of the work. He did not record the hours worked. He had only visited the property once in 2008.

8. The tenants expressed dissatisfaction with the services provided Mr Brotherton. Mr Francis said that he would telephone, for example, about the garden but nothing would happen.

9. In our judgment it is unsatisfactory that Crestcourt has no written contract with Maxiwood, so that there is a complete lack of transparency in what the managing agent was supposed to do and what fees it was entitled to. We would urge Mr Brotherton to rectify these matters and to read (and act in accordance with) the RICS Code.

10. That said, however, it is the case that the annual fees charged by Crestcourt are low for outer London. This reflects, we think, the fact that Crestcourt does not do very much. In 2006 and 2007, it just collected the ground rent and arranged the insurance. In 2008 it arranged some fairly modest repairs in addition and obtained a report from a surveyor on the works which would be required in due course. The surveyor's report was followed up in 2009, when an asbestos survey and fire report were obtained. The surveyor was instructed to prepare a specification for major works to be carried out in 2010.

11. The figure of £360 in respect of management fees for 2007 is in our judgment reasonable. In 2006 Crestcourt only acted as managing agent for six months. We therefore consider that the figure for that year should be half that for 2007, or £180. In 2008 the firm did more work and we consider that that justifies the £500 fee in that year. The same applies for 2009, where we allow £500 as well. The budgeted figure for 2010 is £650, but we do not consider that more than an inflation adjusted amount can be justified. In our judgment £525 is appropriate as a budgeted figure in the absence of any written contract with the agents.

Minor works 2008

12. In 2008 the managing agents instructed a firm called Cuttle to carry out some minor works to the guttering and downpipe. Cuttle charged £750 plus VAT. The tenants complain that the works were poorly carried out. They produced a photograph showing how the downpipe did not go into the soakaway directly. Instead the workmen had devised a Heath Robinson-type "shoe" which dog-legged around the side of the house into the soakaway on that side.

13. In our judgment competent workmen would have extended the gulley around the side of

the house, so that the downpipe discharge directly over the soakaway. They would also have taken the opportunity to repair the defective render on the side of the house. We disallow £150 plus VAT.

14. The tenants did not challenge the surveyor's fee for this year.

2009

15. The tenants complained about the agents obtaining an asbestos and fire report. In our judgment, however, these were both necessary before major works could be contemplated. Nowadays a landlord employing contractors to carry out works had to show whether there is any risk of asbestos being found on the premises. Likewise a fire report is important in considering what major works are required. Accordingly we do not disallow these items.

16. The surveyor, Stuart Radley Associates raised two invoices, one for "preparation of specification of works for commonways" £225 plus VAT, and another for "producing combined specification of works for refurbishment of commonparts and fire precaution works": £300 plus VAT. In our judgment there is substantial duplication of these invoices. The general part of the specification is likely to be identical for both and we fail to see why the fire precaution works (which were fairly limited) would cost more than the total cost of the original specification for the common parts alone. The latter specification will simply be a modification of the original specification by adding additional items.

17. Accordingly we disallow £225 plus VAT, a total of £258.75.

Budget 2010

18. The Tribunal in considering a budget is solely concerned with whether the figures are a reasonable estimate of monies payable on account. The landlord is currently carrying out a section 20 consultation exercise for the major works and in our judgment the sums in the budget are reasonable (save for the £100 deduction in respect of the management fee).

Conclusion

19. Accordingly the sums payable in our judgment are as follows:

2006	
Insurance	£783.13
Repairs: clearance	256.75
Management fee	180.00
	£1,219.88

2007	
Insurance	£820.54
Management fee	360.00
	£1,180.54
2008	
Insurance	£895.95
Repairs: Cuttle	705.00
Surveyors' fees: Stuart Radley	440.63
Management fee	500.00
	£2,541.58
2009	
Insurance	£955.74
Asbestos survey: Tersus	276.00
Fire risk survey: BFA	253.00
Surveyors' fees: Stuart Radley	345.00
Management fee	500.00
	£2,329.74
2010 (Budgeted figures)	
Insurance	£975.00
Gardening	800.00
Common parts refurbishment (including fire risk improvements)	7,000.00
Surveyors' fee	600.00
Management fees	525.00
	£9,900.00

Costs

20. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal by the landlord. In our judgment in respect of the items challenged the tenants have had some success, but not overwhelming success. We have criticised the managing agent for lack of transparency and indeed this lack of transparency extended into the accounts produced by the managing agent, which we suspect were not easy for the tenants to follow.

21. In these circumstances we consider that the fairest course is to split these costs 50:50. The effect is that the landlord must pay the tenants £125.