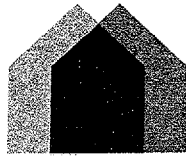


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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**LON/00BE/LSC/2006/0178**

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

<b>Applicants:</b>	<b>Mr &amp; Mrs William Leigh (20)</b>
	<b>C Lodge (25)</b>
	<b>Mr M Coiffard/J Bond (32)</b>
	<b>F Sorhaindo (37)</b>
	<b>Mrs E Brown (40)</b>
	<b>Mrs A Ttokkallos (47)</b>
	<b>Mrs R Silveira (49)</b>
<b>Respondent:</b>	<b>Southwark London Borough Council</b>
<b>Property:</b>	<b>Laxley Close, Farmers Road, London SE5 0YP</b>
<b>Date of Application:</b>	<b>8 May 2006</b>
<b>Date of Hearing:</b>	<b>25<sup>th</sup> and 26<sup>th</sup> September 2006</b>
<b>Venue:</b>	<b>10 Alfred Place, London WC1E 7LR</b>
<b>Appearances for Applicant:</b>	<b>Mr &amp; Mrs Leigh</b>
	<b>Mrs Silveira</b>
	<b>Mrs Ttokkallos</b>
	<b>Mr Coiffard</b>
	<b>Mrs Brown</b>
<b>Appearances for Respondent:</b>	<b>Mr J Joseph      LBS, Home Ownership Unit</b>
	<b>Mr J Hargreaves      LBS, Building Design Services</b>

**Mr R Brown**                      **LBS, Building Design  
Services**  
**Mr C Ayton**                      **LBS**

**Also in Attendance:**        **Mrs M Anstee**

**Members of the Tribunal:** **Mr John Hewitt**        **Chairman**  
   **Mr Ian Holdsworth** **BSc MSc FRICS**  
   **Mr Owen Miller**        **BSc**

**Date of Decision:**            **7<sup>th</sup> December 2006**

## **Decision**

1. The decision of the Tribunal is that:
  - 1.1 When the final accounts for the major works projects mentioned below are issued and invoices raised in respect of the respective contributions payable by the Applicants adjustments shall be made as follows:
    1. The costs attributable to each Applicant in respect of the windows shall be reduced by £250 – see paragraph 50.
    2. The cost of the scaffolding shall be limited to £16,000 (and not the sum of £23,830) as claimed – see paragraph 52
    3. The costs attributable to each Applicant in respect of the entrance screens shall be limited to £2,300 (and not £2,730 as claimed).
  - 1.2 The Tribunal is conscious that the final accounts for the project are not yet available. The Respondent submitted that draft accounts submitted for the purpose of the hearing was a fairly advanced draft and that the Council did not expect there to be any major variations. However should there be any major variations or should there be disputes over the sums payable by individual Applicants arising from this decision, further directions are given – see paragraph 59.
2. The findings of the Tribunal and the reasons for its decisions are set out below.

### **NB**

Reference to a number in square brackets [ ] is a reference to the page number of volume 1 of the trial bundle provided to us. Pages in volume 2 are prefixed [v2...].

## **Background**

3. The Applicants are a number of some of the long lessees of maisonettes in 9-50 Laxley Close, Farmers Lane London SE5 0YP.

The Respondent (the Council) is the landlord. The long leases were granted pursuant to the Right to Buy provisions of the Housing Act 1985.

4. Laxley Close, which is on the Brandon Estate, is a large block of maisonettes. Major works comprising PVC-u double glazed window replacement and external decorations have been carried out by the Council. The Council seeks to recover a share of the cost of the works from the long lessees in accordance with the terms of the leases granted.
5. Copies of the relevant leases are included within the trial bundle. So far as material to this application they are in common form. For ease of reference we shall refer to just one lease; that for 20 Laxley Close granted to Mr & Mrs William Leigh on 7<sup>th</sup> November 1988 [13-42].
6. Details of the proposed works are set out in a s20 notices dated 22<sup>nd</sup> July 2003 [55-57], 16<sup>th</sup> August 2004 [50-53] and 19<sup>th</sup> April 2005 [43-49]. The competitive tender accepted by the Council was that submitted by Frencon Construction in the sum of £1,246,845. The cost to 20 Laxley Close was estimated by the Council as follows:

Cost of works	£16,483.71
Professional fees (8.56%)	1,425.84
Management fee (10%)	<u>1,648.37</u>
<b>Total</b>	<b>£19,557.92</b>

However, in the event it was decided to revise the schedule of work and inevitably there were numerous other omissions and additions.

7. In June 2005 a letter was written to Mr & Mrs Leigh seeking to clarify confusion over the general scope and cost of the proposed works. A revised estimated contribution of £11,015.40 was given.
8. The Council issued to Mr Leigh invoices as follows:

31.03.04 [v2.77]	
Estimate Charge: Brandon Estate 3 Phase 1	
Windows & External Decorations	
Works	£7,841.78
Management fee (5%)	392.09
Professional fee (8.65%)	<u>678.31</u>
<b>Total</b>	<b>£8,912.18</b>

31.10.05 [v2.52]	
Estimate Charge: Brandon Estate 3 Phase 1	
Extension: Refurbishment	
Works	£11,015.40
Supervision fee (7.65%)	842.68
Management fees (10%)	<u>1,101.54</u>
<b>Total</b>	<b>£12,959.62</b>

9. Mrs Leigh is chair of the local tenants and residents association and on 8 May 2006 made an application, on behalf of herself and her husband and the other Applicants, pursuant to s27A of the Act seeking a determination of service charges payable in respect of the major works. There is also a related application under s20C of the Act in respect of the Council's costs of these proceedings [107-114].
10. A directions hearing was scheduled for 19<sup>th</sup> June 2006 when both parties were represented. Directions were duly given and paragraph C [100] records the service charges in issue. Paragraph D records that the Applicants accepted that the installation of the new windows and the repairs carried out to the roof and terraces were necessary and reasonably incurred, but that the Applicants did not accept that either the cost and standard of works were reasonable.
11. The Tribunal carried out a site visit on the morning of 25<sup>th</sup> September 2006 Mrs Leigh was present together with a number of representatives of the Council. The Tribunal were able to undertake a close inspection of the new windows in 20 Laxley Close, the terrace, the common parts of part of the block and also the roof of the block.
12. The hearing commenced at 1:30pm on 25<sup>th</sup> September 2006 and concluded at 1:00pm on 26<sup>th</sup> September 2006. Mrs Leigh represented the Applicants. Mr Joseph represented the Council.

### **The Lease**

13. There were no major issues between the parties at to the terms and effect of the lease. Accordingly we simply have to record a few key points.  
By clause 3 the lessee covenants to pay the Service Charge contributions set out in the Third Schedule.  
By clause 4 the Council covenants:
  - (2) to keep in repair structure and exterior of the flat and the building and to make good any defects;
  - (3) to keep in repair the common parts of the building;
  - (4) to decorate the outside parts of the building;
  - (5) to provide the services (as defined).The Third Schedule details the expenditure incurred by the Council which is to be regarded as the Service Charge and a detailed regime for the provision of budgets, the payments of quarterly sums on account, final year end accounts and the calculation (and payment) of balancing charges.

### **The Issues**

14. At the beginning of the hearing both parties were invited to make opening statements.
15. Mrs Leigh was critical of the cost and safety of the windows and queried what guarantee was available. Mrs Leigh acknowledged that her contribution to the windows at about £4,500 is a good price provided that there was no on-going liability. The windows are unreliable and components often fail and require replacement. There will be future repair costs which lead her to suggest that a capital cost of £3 - £3,500 only would be reasonable.  
Mrs Leigh said that the repairs to the roof were due to years of neglect and that storm damage which had occurred in 1988 had never been made good properly. Mrs Leigh also criticised the design of the new entrance ways, and in particular the glass block screens which she said constituted an improvement, not a repair. Further more she said that the new entrance ways posed a significant security risk and if any works were required they should be funded through the Safety and Security bid rather than the service charge account. Mrs Leigh was also critical of the hassle and delay over the project, the frequent changes in personnel and that for at least three months there was no site manager; just a liaison manager.
16. Mrs Leigh complained that consultation was not meaningful that the Council only paid lip service to it. She claimed that the key decisions had been taken before the consultation documents were sent out.
17. Finally Mrs Leigh complained that the work to the patios was only supposed to take 4 days. Eventually it took 13 weeks because of the need to get a grill custom made.
18. Mr Joseph said that under the terms of the leases the Council has to keep the building in repair. The Council's Direct Services were instructed to prepare a specification or works necessary to comply with the Council's obligations and went out to competitive tender with it. The lowest tender was accepted.
19. Mr Joseph arranged for a copy of the windows guarantee to be provided. It is issued by Symphony Windows, Doors & Conservatories Limited. It provides as follows:
  - 1) ten years in respect of PVC-u components
  - 2) ten years for sealed units
  - 3) one year for furniture, hardware or moving parts.  
(Replacement only).
20. Mr Joseph submitted that the Council had complied fully with the old s20 consultation procedure.
21. Mr Joseph acknowledged that the contribution figures had been incorrectly calculated (260 units as opposed to 267) and said that he would have the figured re-worked.

22. It was agreed that the burden of proof rested with the Council and that it should present its case first.

### **The Case for the Council**

23. Mr Brown gave evidence and produced his witness statement [1-2] which he said was true. He explained that a pilot flat was fitted out with the new windows and comments invited. The windows were tilt and turn so that can be cleaned inside and out from within the maisonette. The design met a number of complaints principally that tilting inwards interfered with net curtains. There was concern about delays to the project if planning consent for a different design were needed. Accordingly, he commissioned an outwards opening window that was of a design consistent with the planning permission which had been obtained.
24. Mr Brown said that the windows as installed are of a standard design compliant with the relevant Code of Practice, and to the best of his knowledge with British Standards. He acknowledged that the windows are large but he believes they can be reached, even though some people may have to stand on something to gain extra height to reach to the top fixings. Mr Brown conceded that the design in question is not now used on other parts of the Estate, and that he use a different design in the future because of inherent problems.
25. Mr Brown is confident that the windows will work well over the next 10/20 years. He believes that the price is very fair and offers value. He said that bottom price is reasonable and that Symphony's was the best price for the quality on offer. He also said that the guarantee was insurance company backed.
26. Mr Brown said that in addition to the windows, telephone hand sets were fitted in readiness for the new security entry-phone system; external redecorations to timber cladding, garage doors and bin stores were carried out; running repairs to water leaks were effected and some limited brickwork repairs undertaken.
27. In cross-examination Mr Brown said that the snagging period was now ended and that the contractors have been back to sort out problems at no extra charge. He said that if the hinges fail after 12 months they can only be replaced with like for like.
28. Mr Brown considered that cost of each window was in the order of £400-£450.
29. Mr John Hargreaves gave evidence. He produced his witness statement [3-4] which he said was true. Mr Hargreaves explained the history to the re-design of the entrances, the consideration of the security issues and the learning from experience on other estates.

30. Mr Hargreaves went through the detailed accounting documents and the audit trail carefully and answered several points arising thereon. He confirmed that the Supervision fee to be charged is 7.65% and covers the work undertaken by the architect, the quantity surveyor, the planning supervisor, the work putting the tender documents together and post tender the quantity surveyor, the clerk of works and the project manager.
31. Mr Hargreaves explained that he took over as clerk of works 30 weeks into a 28 week contract. By that time most of the work had been completed.
32. Mr Hargreaves said that the final accounts have not yet been signed off but should be close to the present forecast. He considered that the total cost of the project would be just under £1m inclusive of supervision and management.
33. Mr Hargreaves submitted the most recent accounts available, which he believed would be very close to the final accounts which showed that the cost to re-charged to 9/50 Laxley Close was £347,270.26 Mr Hargreaves produced a corrected showing the sums now claimed from the Applicants. This is summarised as follows:

House Numbers	Contribution	Supervision (7.65%)	Management (5%)	Total
20,25,32,37 & 49	£9,349.58	£715.34	£467.31	£10,532.31
47	£8,013.93	£613.07	£400.70	£9,027.69

34. In cross-examination Mr Hargreaves dealt with a number of issues raised by Mrs Leigh in connection with the works and the time scale of completion of the works. In relation to the new entrances Mr Hargreaves said that the cost of carrying out necessary works to repair and provide an entry-phone system was approximately 30-40% of the total cost of construction of the new entrances.

#### **The Case for the Applicants**

35. On the above costings, the amount attributable to the 6 larger maisonettes in respect of windows was £4,637.72. Mrs Leigh said this

reasonably satisfactory but she was worried about the one year guarantee for the furniture and hardware. She said that experience so far had shown several problems and the need for replacements to be fitted. She was concerned about on-going costs which will be passed through the service charge account.

36. Mrs Leigh raised the question of pipe work repairs to the roof which she said was caused by high winds in 1988 and not properly put right at that time.
37. Mrs Leigh was critical of the new entrance porches and explained her concerns in detail. She submitted that the works amounted to improvements and were not repairs.
38. Mrs Leigh also submitted that the cost of scaffolding was unreasonable because the first contract was stopped partway through due to overspend on the cost of the re-design. He also argued that the scaffolding was up for an unreasonable length of time
39. In cross-examination Mrs Leigh said that the paintwork was done very badly, the wrong paint had been used and some work had to be put right. Overall she considered the standard of work was very poor and tenants had to endure a good deal of inconvenience.
40. Mrs Anna Ttokkallos who lives in number 47 gave evidence. She was particularly critical of the new windows and the problems associated with them. She went through the various difficulties that she had with her new windows. She said these are on-going problems and she has no confidence in the adequacy of the windows. She is particularly concerned about safety when cleaning the exterior faces of the windows.
41. Mrs Ttokkallos was also highly critical of the new entrance ways which she believes are now more dangerous than before. She said that cars are now parked close to the entrances and that intruders can now climb up to the first floor level.
42. In cross-examination Mrs Ttokkallos accepted that her contribution to the new windows was now £3,975 [v2.164] which she said was not bad. She said this was a bit different from what she was first told and that she was not unhappy with the new bill. Her main concern was the windows are very heavy to move and she believes them to be dangerous.

### **Final Submissions**

43. Mrs Leigh said that she believed she had covered everything and emphasised the most serious complaints that she had.



44. Mr Joseph reiterated that the works needed to be done in conformity with the obligations in the leases and that a competitive tendering process was undertaken.
45. As to the windows Mr Joseph submitted that the full amount claimed should be allowed. If there were any future repair costs or on-going maintenance that was too high the expenditure then claimed could be challenged he said.
46. Mr Joseph submitted that there was no evidence adduced by the Applicants in respect of the alleged pipe work damage and extra costs brought about by alleged years of neglect.
47. As to scaffolding Mr Joseph said that the Council does not have an unlimited budget and that it was necessary to halt work and it was sensible to leave the scaffolding in place.

### **Findings and Reasons**

48. First the Tribunal wishes to thank all those who gave evidence at the hearing. The Tribunal found that all of the witnesses were honest and genuine doing their best to assist the Tribunal. Evidence was given openly, frankly and without exaggeration.

### **Windows**

49. The Tribunal finds that the costs of the replacement windows represent reasonable value for money for the type of window fittings supplied. The Applicants did not have substantial complaints about costs. Their real concern is that the windows are large, heavy and difficult to manoeuvre and clean.
50. On the evidence before us the robustness of the furniture and moving parts does appear to be suspect and unreliable. The Tribunal would not have expected to so many complaints and repeat problems so early on in a replacement programme. It seems to us that on-going maintenance costs might be higher than normal and this, we feel, ought to be reflected in the capital cost of the units. We decide therefore to adjust the capital cost by a £250 reduction to each Applicant to produce a reasonable cost for standard of units installed.

### **Phase 2**

#### **Scaffolding**

51. We preferred the evidence and submissions put forward by the Applicants on this issue. We find that that the scaffolding was not deployed in a reasonable or cost effective way. Mr Hargreaves was unable to explain to us why the roof works were not carried forward. He accepted that the scaffold could have been used for the roof works. He accepted that the Council did not get best value from the scaffold

costs. He could be precise but he thought that better utilisation could have achieved a saving of one third of the £22,830 cost incurred.

52. The cost of scaffolding on this phase is claimed at £22,830 plus supervision and management. We find this to be unreasonably high. We find it should be reduced to £16,000 plus supervision and management which would produce a unit cost of about £430 for each of the 42 units in 9/50 Laxley Close because this reflects the reasonable cost that ought to have been incurred if the project had been coordinated and managed in a more effective manner.

#### **Pipe Work**

53. We were not satisfied that any evidence we could rely upon with confidence was out before us to show that the repairs now effected were rendered more expensive by being carried out later rather than sooner. We therefore find that there is no justification to make any reduction in the costs claimed.

#### **Paint Work**

54. Whilst we accept Mrs Leigh's evidence on this issue, we find that the work has been carried out to acceptable standard in the end. There is no evidence before us that the cost was any greater than if the work had been done properly first time around. We sympathise with the Applicants that the time taken to carry out the works was unnecessarily prolonged by poor management of the contract. However, we do not consider that it would be justified to reduce the costs claimed because we have to have regard to the work undertaken and the reasonable of the cost of it. The implications for tenants and the inconvenience caused are not directly relevant to the strict question before us.

#### **Entrance Screens**

55. We were not persuaded by the Council's case on this issue. We find them to be improvements not repairs. We are not satisfied that the new design is wholly appropriate for Laxley Close and it seems to us that the Council may have rolled out experience achieved elsewhere without due regard to the full impact of implementation on Laxley Close
56. The Tribunal accepts that some works were required to be carried out. The cost of worked carried amounts to £16,380 which if divided by the 6 units produces a unit cost in the region of £2,730 We find that an appropriate and reasonable unit cost should be £2,300 because in the light of the expert evidence given to us during the course of the hearing we found that only 60/70% of the expenditure was reasonably incurred.

#### **Section 20C Application**

57. Mr Joseph conceded that the lease does not enable the Council to recover through the service charge costs incurred in proceedings such as those before us. He said that the Council does not intend to put any

costs incurred with these proceedings through the service charge account.

58. The Tribunal accept the assurances given to us by Mr Joseph and thus we find that we do need to make a formal order on the s20C application.

### Directions

59. In the light of the findings we have made adjustments may be required to the cash account of each Applicant, or will be required when the final accounts are signed off and invoices are raised. The Tribunal hopes that the parties will be able to agree the cash accounts. However should they be unable to do so, either party may apply to the Tribunal for further directions so that issues can be determined



John Hewitt  
7<sup>th</sup> December 2006