

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LSC/2006/0097

REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Leaseholders : Miss Susan Dack, Flat B3, and Mrs Beryl Spreadbury, Flat D2

Respondent/Landlord : Maximillian De Kment

Building : 453 Christchurch Road, Boscombe, Bournemouth, BH1 4AD

Flats : The residential Flats in the Building, including the Premises

Premises : Flats B3, and D2

Date of Application : 25 September 2006

Dates of Directions Hearings : 24 November 2006 and 3 April 2007

Dates of Substantive Hearing : 24 and 25 July 2007

Venue : Function Room, Lighthouse, Poole Centre for the Arts, Kingland Road, Poole, Dorset

Appearances for Applicant/Leaseholders : Miss S Dack, and Miss R Simmonds

Appearances for Respondent/Landlord : Mr M Palfrey (Counsel), Mr M Comport (Dale & Dale), and Mr M De Kment

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr M J Ayres FRICS, and Mr J Mills

Date of Tribunal’s Reasons : 24 August 2007

Introduction

1. This application by the Applicant/ Leaseholders comprises :
 - a. an application under Section 27A(1) of the 1985 Act for the Tribunal to determine the payability of interim service charge demands for the years ending the 25 December

2005 and the 25 December 2006

- b. an application under section 20C of the 1985 Act for an order that the costs incurred by the Respondent/Landlord are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders
2. The Applicant/Leaseholders are the only remaining residential long leaseholders in the Building
 3. On the 23 December 2005 the Tribunal had made a previous determination (case number CHI/00HN/LSC/2005/0021) about service charges for costs already incurred and for major works not yet carried out in relation to the Building

Statutory provisions

4. Section 19(2) of the 1985 Act provides as follows :

19(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

5. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

6. The material parts of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall-

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify- *(i) the address to which such observations may be sent;*

(ii) that they must be delivered within the relevant period;

and

(iii) the date on which the relevant period ends.

Para 11

- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.*
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.*
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-*
 - (a) from the person who received the most nominations; or*
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or*
 - (c) in any other case, from any nominated person.*
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-*
 - (a) from at least one person nominated by a tenant; and*
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).*
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*
 - (a) obtain estimates for the carrying out of the proposed works;*
 - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-*
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*
 - (c) make all of the estimates available for inspection.*
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)-*
 - (a) specify the place and hours at which the estimates may be inspected;*
 - (b) invite the making, in writing, of observations in relation to those estimates;*
 - (c) specify-*
 - (i) the address to which such observations may be sent;*
 - (ii) that they must be delivered within the relevant period; and*
 - (iii) the date on which the relevant period ends.*

Documents

7. The documents before the Tribunal are :
- a. the Respondent/Landlord's lever-arch file bundle pages 1 to 289
 - b. the Respondent/Landlord's black ring-binder supplementary bundle pages 1 to 78 submitted by Mr Palfrey on the first day of the substantive hearing
 - c. Miss Dack's Personal Statement dated the 17 July 2007 pages 1 to 3
 - d. letter from Dale & Dale to Turners Solicitors 15 May 2007 with copies of local authority decision notices, planning application plans, and copies of lease plans
 - e. chronology submitted by Mr Palfrey on the first day of the substantive hearing
 - f. photographs pages 1 to 32 submitted by Mr Palfrey on the second day of the substantive hearing

Expressions used in these reasons

8. The following expressions in these reasons have the following meanings :
- a. LAF1, LAF2, and so on : page numbers in the Respondent/Landlord's lever-arch file bundle
 - b. BRB1, BRB2, and so on : page numbers in the Respondent/Landlord's black ring-binder supplementary bundle
 - c. P1, P2, and so on : page numbers in the bundle of photographs
 - d. 2005 determination : the Tribunal's previous determination dated the 23 December 2005 case number CHI/00HN/LSC/2005/0021 in relation to the Building (LAF105 to 153)
 - e. PD1, PD2, and so on : paragraph numbers in the 2005 determination
 - f. original specification : the original major works specification prepared by Miles and Co dated June 2003 (BRB5 to 42)
 - g. new specification : the revised major works specification prepared by Miles and Co dated April 2006 (LAF217 to 252)
 - h. original major works : the works referred to in the original specification
 - i. revised major works : the works referred to in the new specification

Inspection

9. A description of the Building from the Tribunal's previous inspection on the 21 October 2005 is at PD12 and 13 (LAF111)
10. The Tribunal inspected the exterior of the Building again on the 24 July 2007. It was apparent that substantial conversion works were being carried out. Boarding had been erected in front of the ground floor shops to the right of the western elevation (P5, P8). Mr De Kment told the Tribunal that they were being converted to flats. UPVC windows had been installed on the first and second floor levels of the western elevation (P9, P10, P16). A sign on the outside of the Building announced new flats would be available to rent and it appeared that Miss Dack and Mrs Sreadbury were the only remaining long leaseholders in the Building. The Building was part way through a major conversion with workers in many parts; wires and cables were in open

view in common parts.

11. There was damage to the corner of the wall in the south-west corner of the Building (P14, P17). The parties agreed that the damage had been caused by a skip lorry. There was an arc-shaped scrape in the brickwork near the top of two ground floor windows in the southern elevation (P29, 30). Again, the parties agreed that that scrape had been caused by a skip lorry. There was a crack in the brickwork below that arc-shaped scrape (P25, 27, 28, 29, 30). Ms Dack and Miss Simmonds told the Tribunal that that crack had also been caused by the skip lorry. Mr De Kment said that it had not, and that it was an existing crack
12. The roof ridge running from south to north finished with a flat top, rather than a peak (P20)
13. A ground-floor brick extension had been built on the left side of the eastern elevation, part of which had been built over the rear access to the block, a common part. Mr De Kment said that it was part of the conversion works. He had planning permission to make a similar extension at first and second floor levels as well, but could not do so because Miss Dack's Flat B3 was where the first-floor part of the extension would be. To the right of the ground floor extension the lower section of an old metal downpipe had been replaced with a plastic section which bypassed the existing drain and went over the second stairwell door (which had been blocked) and continued downwards to the right of that door (P2, P4, P7, P11, P15). The parties agreed that there were 13 communal windows in the eastern elevation (P7, P11, P13, P15, P19, P31, P32), plus 2 further communal windows forming the top and side of the blocked second stairwell door (P4), making 15 in all
14. The Tribunal briefly inspected the interior of the Building. Again, it was apparent that substantial conversion works were being carried out, including conversion works to the part of the Building immediately below Miss Dack's Flat. Some of the internal conversion works involved new walls to create additional flats, part of which had been built over the corridors, a common part. There were also new doors. There was no carpet in the accessways or on the staircase. The second staircase at the rear (eastern elevation, leading down to the blocked doorway (P4)) was blocked off
15. The condition of those parts of the Building which were not being converted was otherwise as recorded at PD12 and 13 (LAF111)

The Leases

16. The parties agreed at the directions hearing on the 24 November 2006 that the Premises were held on Leases in similar terms to the lease of Flat C1 (LAF12 to 48), except that the "Tenant's share of total expenditure" in clause 1(8) for each of the Respondent/Leaseholders was :
 - a. Miss Dack 11%
 - b. Mrs Spreadbury 6%
17. However, a copy of Miss Dack's lease of Flat B3 is now at LAF160 to 176, and, a copy of Mrs Spreadbury's lease of Flat D2 is now at LAF177 to 213

- (i) *the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building)*
 - (ii) *all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may be enjoyed or used by the Tenant in common with the owners or tenants or the other flats in the Building*
 - (iii) *the Common Parts*
 - (iv) *the boundary walls and fences of the Building*
 - (v) *all other parts of the Building not included in the foregoing sub-paragraphs (i) to (iv) and not included in this demise or the demise of any other flat or part of the Building*
- (b) *as and when the Lessors shall deem necessary*
- (i) *to paint the whole of the outside... .. of the Building... ..*
 - (ii) *to paint... .. the interior parts of the Building... .. (other than those parts which are included in this demise or in the demise of any other flat in the Building)*
- (c) *to insure... .. the Building... ..*
- (d) *to keep clean and where appropriate lighted the Common Parts*
- (g) (i) *to employ at the Lessor's discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents... .. including the cost of computing and collecting rents in respect of the Building or any parts thereof*
- (ii) *to employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for proper maintenance safety and administration of the Building*

The First Schedule – The Demised Premises

The Flat... .. shown red on the plan... .. including

- (a) *the internal plastered coverings and plaster work of the walls bounding the Flat and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such doors and door frames and window frames) and the glass fitted in such window frames*
- (d) *all conduits which are laid in any part of the Building and serve exclusively the Flat... ..*

The Fifth Schedule – The Service Charge

1 In this Schedule:

(1) "Total Expenditure" means the total expenditure including value added tax incurred by the Lessors in any Accounting Period in carrying out their obligations under clause 5(5) of this Lease and any other costs and expenses reasonably incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and (b) the cost of any accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder

(2) "the Service Charge" means such percentage or fraction of Total Expenditure as is specified in Paragraph 7 of the Particulars... ..

(3) "the Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment

3the Interim Charge shall be paid to the Lessors by equal payments in advance on 24 June and 25 December in each year

Preliminary points

19. In the 2005 determination the Tribunal made a finding that the requirements of section 20 of the 1985 Act had not been complied with in relation to the original major works (PD189)

20. The Tribunal noted that in relation to the revised major works the Respondent/Landlord had now served two further notices dated the 27 April 2006 (LAF214 to 216) and the 22 August 2006 (LAF276 to 284) purporting to be pursuant to the 2003 Regulations

21. The Tribunal indicated that the Tribunal had concerns about whether those notices complied with the requirements of the 2003 Regulations, and invited Mr Palfrey to comment on them so that the Tribunal could make a preliminary finding in that respect

Notice dated the 27 April 2006 to Mrs Spreadbury (LAF216)

22. The Tribunal drew attention to the date specified in paragraph 4 of the notice, stating that the 30 day period would end on the 18 May 2006, whereas the notices addressed to Miss Dack on the same date had specified the 26 May 2006 (LAF214 and 215)

23. Mr Palfrey submitted that this point had not been raised in the application form, and Mrs Spreadbury was not present at the hearing to advance any argument to that effect. In any event, the service charges in issue before the Tribunal in this present application were interim charges before any costs had been incurred, so that the requirements of section 20 of the 1985 Act did not apply to them (section 20(2) of the 1985 Act). It was reasonable in principle for the purposes of section 19(2) of the 1985 Act for a leaseholder to pay an interim charge under the lease in that respect for the full sums involved, even if the lessee's contribution would have been capped at £250 under section 20 if the costs had already been incurred. The amounts estimated in the budgets which were the basis of the interim charge demands were genuine

estimates of the costs likely to be incurred and were accordingly payable even if section 20 had not by then been complied with

Notices dated the 22 August 2006 to Miss Dack and Mrs Spreadbury (LAF276 to 284)

24. The Tribunal drew attention to the following concerns :

- a. the Spetisbury estimate was stated to be £279,059, whereas the actual estimate stated a figure of £271,059 (LAF280). Mr Palfrey submitted that that was simply a typing mistake which had no effect on the validity of the notice; that the correct figure was shown in the estimate which was attached to the notice; and that in any event, even the correct figure was higher than that in the chosen estimate of Steve Springett (LAF278)
- b. there did not appear to be a summary of the leaseholders' observations or the landlord's response to them. Mr Palfrey submitted that copies of the leaseholders' letters had been attached to the notice, and the estimates attached formed the landlord's response
- c. there did not appear to be a statement that the estimates were available for inspection. Mr Palfrey submitted that the estimates had been attached, and although they were only single sheets without a detailed breakdown of how the estimates had been calculated, they were all that the Respondent/Landlord had received from the contractors in that respect
- d. there did not appear to be a date specified for the end of the period for delivering observations. Mr Palfrey submitted that the date could be inferred from the fact that the notice was dated and that it specified that observations must be delivered within 30 days beginning with the date of the notice. A purposive approach should be adopted to the construction of the 2003 Regulations, whose purpose was to give the leaseholders information and to give them time to respond. The notice gave the leaseholders the correct amount of notice, and a reasonable recipient was not confused or left in doubt : **Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd** [1997] 3 All ER 352 (HL)
- e. in any event, Mr Palfrey relied on his earlier argument that section 20 of the 1985 Act did not apply to a demand for interim service charges where the costs had not yet been incurred

The Tribunal's findings on the preliminary points

25. The Tribunal indicated the following findings to the parties at the hearing

- a. the fact that Mrs Spreadbury was absent from the hearing simply meant that the Tribunal was unable to hear oral evidence from her, and that the Tribunal was unable to have the benefit of hearing her evidence tested in cross-examination; she was still an applicant to these proceedings (LAF1), and the statutory cap under section 20 of the 1985 Act applied irrespective of whether or not it was advanced by a party to the proceedings
- b. the notice dated the 27 April 2006 to Mrs Spreadbury specified the wrong date and did not comply with the requirements of section 20 of the 1985 Act, for the same reasons as were set out in the 2005 determination at PD192 (LAF137)
- c. the notices dated the 22 August 2006 to Miss Dack and Mrs Spreadbury did not comply

with the requirements of section 20 of the 1985 Act, in that :

- the copying of the leaseholders' letters did not satisfy the requirement in paragraph 11(5)(b)(ii) of the 2003 Regulations for the notice to contain a summary of the leaseholders' observations
 - there was no summary of the landlord's response to those observations and the copying of estimates did not satisfy the requirement in paragraph 11(5)(b)(ii) of the 2003 Regulations to that effect
 - there was no date specified as the end of the period for the making of observations, which did not satisfy the express requirement in paragraph 11(10)(c)(iii) of the 2003 Regulations to do so, for the same reasons as were set out in PD192d and 192f of the 2005 determination (LAF137)
- d. if the costs referred to in the interim service charge demands had already been incurred, then the service charge payable by the Applicant/ Leaseholders in that respect would have been limited to £250 each under section 20 of the 1985 Act
- e. however, the Tribunal accepted Mr Palfrey's submission that the requirements of section 20 of the 1985 Act did not apply to costs which have not yet been incurred
- f. the Tribunal also accepted Mr Palfrey's submission that it was reasonable that the figures for the revised major works set out in the budgets which formed the basis for the interim service charge demands should be based on the figures determined as reasonable in each respect in the 2005 determination, despite not having complied with the requirements of section 20 of the 1985 Act
- g. the hearing would now proceed to enable the Tribunal to decide on the amount which it was reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay in relation to the service charge demands

Interim service charge demands

26. Mr Palfrey referred the Tribunal to letters from Dale & Dale dated the 26 May 2006, with which demands for the interim service charge demands were served on Miss Dack (LAF260 and 261) and Mrs Spreadbury (LAF258)

27. The demands themselves were at LAF262 and 259 respectively, and the budgets were at LAF263 (for the year ending the 25 December 2005) and LAF264 (for the year ending the 25 December 2006)

28. The budget for the year ending the 25 December 2005 was for :

Audit	£490
Cleaning/supplies	£1,700
Electricity	£100
Fire extinguishers	£300
General repairs and maintenance	£1,000
Insurance	£2,000
Management fees	<u>£2,820</u>
Total	<u>£8,410</u>

29. The budget for the year ending the 25 December 2006 was for :

Audit	£490
Cleaning/supplies	£1,700
Electricity	£100
Fire extinguishers	£300
General repairs and maintenance	£1,000
Insurance	£2,000
Management fees	<u>£2,820</u>
Sub-total	£8,410
Major works	<u>£368,000</u>
Total	<u>£376,410</u>

30. Miss Dack's demand, in addition to demanding sums from previous years, was for :

First interim service charge for financial year ending 25 December 2005	
11% of budget £8,410 due 25 December 2004 [sic]	£462.55
Second [sic] interim service charge for financial year ending 25 December 2005 due 24 June 2005	£462.55
First half interim service charge for financial year ending 25 December 2006	
11% of budget £376,410 due 25 December 2005 [sic]	£20,702.01

31. Mrs Spreadbury's demand, in addition to demanding sums from previous years, was for :

First interim service charge for financial year ending 25 December 2005	
6% of budget £8,410 due 25 December 2004 [sic]	£252.30
Second [sic] interim service charge for financial year ending 25 December 2005 due 24 June 2005	£252.30
First half interim service charge for financial year ending 25 December 2006	
6% of budget £376,410 due 25 December 2005 [sic]	£11,292.30

32. Further letters from Dale & Dale dated the 30 June 2006 (LAF273 and 274, and LAF271) served on Miss Dack and Mrs Spreadbury demands for service charges falling due on the 24 June 2006 at LAF275 and 272 respectively

33. Miss Dack's demand was for :

Second half interim service charge for financial year ending 25 December 2006	
11% of budget £376,410 due 24 June 2006	£20,702.01

34. Mrs Spreadbury's demand was for :

First [sic] half interim service charge for financial year ending 25 December 2006	
6% of budget £376,410 due 24 June 2006	£11,292.30

35. Ms Dack said that the demand of the 26 May 2006 at LAF262 gave Mr De Kment's address as "c/o Hill Shand Property Management Limited Unit 12 Latimer Road", whereas Hill Shand had

not communicated with her since the 2005 determination and was not at Unit 12 Latimer Road on the 26 May 2006. Downs's statement dated the 30 August 2006 (BRB43) was addressed to the leaseholders "c/o Hill Shand Property Management Limited 10 Beauchamp Place"

36. Mr Palfrey's submissions were that the address given was an address for the Respondent/Landlord, not for the managing agents, as such. If the Respondent/Landlord used that address then it was a valid address for the purposes of the demand. Hill Shand had been then, and were still, instructed to act as managing agents. They had moved to 10 Beauchamp Place on the 22 June 2006
37. Ms Dack asked to whom payments of ground rent and service charge should be made. Mr Palfrey said that they should be paid to Hill Shand at the 10 Beauchamp Place address

Validity of service charge demands

38. The Tribunal indicated that the Tribunal had concerns about whether the demands complied with the procedure for demanding interim charges set out in the fifth schedule of the leases of the Premises, in the light of the definition of "accounting period" in clause 1(6)
39. Mr Palfrey accepted that the accounting period in each year started on the 26 December and finished on the following 25 December, and that interim charges were payable on the 24 June and 25 December in each year. He also accepted that the sums in relation to the revised major works which had been demanded on the 26 May 2006 as being due on the 25 December 2005 as interim service charges for the year ending the 25 December 2006 (LAF262) had not in fact been due on the 25 December 2005 and that in relation to those sums, there was no valid demand before the Tribunal
40. However, Mr Palfrey submitted that the mere description of an interim service charge as "first" or "second" did not of itself invalidate an otherwise valid demand, even if an interim service charge was described as "first" when it was said to be due in December, or as "second" when it was said to be due in June. The relevant question for the Tribunal was whether the sum demanded was payable on the date when it was said to be due, not how the interim service charge was described in the demand

The Tribunal's findings in relation to the validity of the service charge demands

41. The Tribunal finds that that the sums which had been demanded on the 26 May 2006 as being due on the 25 December 2004 as interim service charges for the year ending the 25 December 2005 had not in fact been due on the 25 December 2004, and that the sums which had been demanded on the 26 May 2006 as being due on the 25 December 2005 as interim service charges for the year ending the 25 December 2006 had not in fact been due on the 25 December 2005, and that in relation to those sums, there is no valid demand before the Tribunal
42. In relation to Miss Dack's demand on the 26 May 2006, the following sums have not been validly demanded, and are accordingly not payable as part of the interim service charges demanded on that date :

First interim service charge for financial year ending 25 December 2005

11% of budget £8,410 due 25 December 2004 [sic] £462.55

First half interim service charge for financial year ending 25 December 2006

11% of budget £376,410 due 25 December 2005 [sic] £20,702.01

43. In relation to Mrs Spreadbury's demand on the 26 May 2006, the following sums have not been

validly demanded, and are accordingly not payable as part of the interim service charges demanded on that date :

First interim service charge for financial year ending 25 December 2005

6% of budget £8,410 due 25 December 2004 [sic] £252.30

First half interim service charge for financial year ending 25 December 2006

6% of budget £376,410 due 25 December 2005 {sic} £11,292.30

44. The Tribunal finds that the remaining demands were validly made, and that the issue before the Tribunal in relation to the sums demanded is therefore the amount which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay by way of interim service charges in relation to those demands
45. The Tribunal is satisfied that the address given for Mr De Kment in the demands at LAF 262 and 259 satisfied the requirements in that respect in sections 47 and 48 of the Landlord and Tenant Act 1987

Date at which the reasonableness of payment is to be assessed

46. Mr Palfrey submitted that the date at which the reasonableness of an interim service charge demand should be assessed under section 19(2) of the 1985 Act was the date of the demand, with a test of the reasonableness of foresight, not hindsight, and that any adjustment under section 19(2) when the actual figures are known would be made in accordance with the terms of the leases at a later date in the usual way
47. However, the Tribunal finds that :
- a. the date at which the reasonableness of a service charge *demand* should be assessed is the date of the demand
 - b. however, section 19(2) of the 1985 Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than *is reasonable is* so payable
 - c. the task for the Tribunal under section 19(2) of the 1985 Act is therefore not to assess whether the demand, as such, *was* reasonable, but to assess whether the amount payable *is* reasonable
 - d. the date for an assessment of the reasonableness of the amount to be paid is accordingly the date of the hearing
 - e. the closing words of section 19(2) “*and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise*” are wide enough to refer to adjustments being made by the Tribunal, not merely to adjustments being made by the parties during the course of the accounting processes set out in the leases
 - f. in carrying out the assessment of the reasonableness of the amount to be paid under an interim service charge demand, the Tribunal can therefore take into account costs actually incurred by the date of the hearing, even if they were incurred after the date of the demand

General points raised by Miss Dack

48. Miss Dack stated in her Personal Statement dated the 17 July 2007 that the Respondent/Landlord was redeveloping the Building, including the common parts, for letting at

high rents. The redevelopment rendered the new specification void. Fire precautions would be different. The Respondent/Landlord had built extensions into the common parts. The roof works had changed because of a flat in the roof space. The back wall would be removed for a new flat in the ground-floor extension. A skip had damaged brickwork. Electricity would be wired from a cupboard to the new flats. The Respondent/Landlord had no intention of starting the revised major works until after he had completed the improvement development as he would have to do some of the same work twice at greater expense, but he still expected the leaseholders to pay money in advance with no time scale for the revised major works. Instead he had already taken court action against Miss Dack under a section 146 notice

49. In closing submissions, Miss Dack said that the Respondent/Landlord had owned the Building since the 20 December 2000, according to a letter he had written at the time. Prior to that time there had been a building reserve fund. The leaseholders had employed a professional to find out what had happened to the reserve fund, and Miss Dack had been repaid £2,400

The sums demanded

50. The parties respective cases in relation to each sum demanded, and the Tribunal's findings in each case, are as set out in the following paragraphs of these reasons

Revised major works as summarised in the "Scott Schedule" at LAF155

Preliminaries £13,000 (2005 determination PD198 LAF138 and 139)

51. Miss Dack made no comment

52. Mr Palfrey's submissions were that none of the works referred to were duplicated by the preliminaries for the conversion works now being carried out. Any preliminaries, such as scaffolding, for the present conversion works would be removed before the revised major works were started

53. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £13,000

Skips £1,000 (2005 determination PD200 LAF139)

54. Miss Dack made no comment

55. Mr Palfrey's submissions were that this item was unchanged from when the Tribunal had found it reasonable in the 2005 determination

56. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £1,000

Protective fans and sheeting £29,600 (2005 determination PD202 LAF139)

57. Miss Dack made no comment

58. Mr Palfrey's submissions were that the scaffolding would be re-erected with new sheeting. There were no current fans over the entry doors

59. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £29,600

Roof, brickwork, stonework, guttering, downpipes £84,223 (2005 determination PD 203 and

204 LAF139 and 140)

60. Miss Dack made no comment about stonework or guttering

61. So far as the flat roof was concerned, the Respondent/Landlord had obtained planning permission for the formation of a pitched roof to replace the flat roof and the formation of a new flat at that level, which would affect the revised major works roof work proposals. The Respondent/Landlord had already installed water pipes marked "E1", which referred to the proposed flat at that new floor level, and showed that he was going to implement those planning permissions

62. So far as the ground-floor brickwork on the southern elevation was concerned, the repairs to the damage caused by the skip lorry should be covered by insurance, and should be deducted from the service charge. So far as the ground-floor extension on the eastern elevation was concerned, this had replaced a section of wall which had required repairs, including replacement of wall-ties, under the new specification

63. Mr De Kment gave evidence as follows :

- a. roof : the planning permissions were from 2003, and would expire next year, in 2008; Mr De Kment did not intend to implement those permissions; he had not applied for Building Regulations approval; he had installed the water pipes simply to keep his options open, and because it was cheaper to install them now, at the same time as the others
- b. downpipe : the plastic pipe which had replaced the metal pipe above the blocked staircase door on the eastern elevation (P2, P4, P7, P11, P15) was temporary only; it had been put in because the conversion works to the basement had meant that the lower section of the old downpipe and drain could no longer be used; it would be replaced with metal when the downpipes were replaced under the revised major works proposal; the only extra work which was attributable to the present conversion works was therefore the section of pipe which had to be re-routed.

64. Mr Palfrey's submissions were as follows :

- a. roof : the existing flat roof was not slated, and there was no reference to it being slated in the original specification or the new specification; the proposed pitched roof and flat works therefore had no impact on the service charges payable in respect of the revised major works; if, on the other hand, the roof conversion took place and did have an impact on the revised major works relating to the roof, then the Applicant/ Leaseholders would be entitled to an adjustment at that stage under section 19(2) of the 1985 Act
- b. brickwork : the question whether or not the skip lorry had caused damage to the ground-floor brickwork on the southern elevation had no impact on the service charges payable in respect of the revised major works; so far as the brickwork on the south-western corner was concerned, in respect of which it was accepted that the skip lorry had caused damage, it was clear from P14 that the brickwork was otherwise in good condition, so that the new specification would not have required repairs in that area; so far as the cracked brickwork between the windows was concerned, either it had been caused by the skip lorry or it had not; if not, then it must have been pre-existing, and it should be assumed that it was already part of the revised major works included in the new specification; if it had been caused by the skip lorry, it was clear from P25, 27, 28, 29, 30 that the brickwork in that area was otherwise in good condition, so that the new

specification would not have required repairs in that area

- c. it was accepted that the ground-floor extension on the eastern elevation had replaced a section of wall which was about 4m x 3.5m; after discussion, the parties agreed that a deduction of £100 was fair in this respect
- d. stonework and guttering : these items were unchanged from when the Tribunal had found them reasonable in the 2005 determination
- e. downpipe : after discussion, the parties agreed that a deduction of £25 was fair in this respect

65. The Tribunal's findings :

- a. roof : in relation to the roof the Tribunal makes the following findings :
 - the Tribunal has taken account of Mr De Kment's evidence that he does not intend to carry out the proposed work to form a new flat in a pitched roof, that the water pipe for that proposed flat has been installed only to give him the option to do so and because it was cheaper to carry out all the pipe work at once, that he has not applied for Building Regulations approval, and that the planning permission expires next year
 - however, having considered all the evidence in the round on a balance of probabilities, the Tribunal does not find Mr De Kment's evidence in that respect persuasive, and finds that it is more likely that he does intend to carry out that work
 - however, the Tribunal accepts Mr Palfrey's submission that the existing flat roof is neither tiled nor slated and that there is no provision in the original specification or the new specification for tiling or slating it
 - there is a possibility that there might be some savings in overall cost to the Respondent/Landlord, such as in scaffolding and chimney work, if the Respondent/Landlord were to carry out the re-slating under the revised major works at the same time as carrying out the roof conversion works
 - however, that possibility does not of itself make it unreasonable for the whole cost of the re-slating under the revised major works to be included in the budget upon which the interim service charge was based
- b. brickwork : in relation to brickwork the Tribunal makes the following findings :
 - ground-floor extension on eastern elevation : there should be a deduction of £100 from the amount upon which the interim service charge is based, as agreed between the parties
 - damage to southern elevation : there should be no deduction in this respect, for the reasons advanced by Mr Palfrey
- c. downpipe on eastern elevation : there should be a deduction of £25, as agreed between the parties
- d. the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £84,098 (£84223 less £100 and less £25)

Windows £24,322 (2005 determination PD205 LAF140)

66. The Tribunal expressed initial concern that there was a reference in paragraph 205 of the 2005 determination (LAF140) to this work covering 19 windows on the eastern elevation, whereas the parties had agreed at inspection that there were only 15
67. Miss Dack and Miss Simmonds both said that 3 of the windows were in fact windows of store-cupboards to which the leaseholders had no access, and were not common-parts windows accordingly
68. Mr Palfrey's submissions were that there had been no change to the number of windows or their use since 2005, and that the difficulty of reconciling the number of windows with the number recorded in the 2005 determination therefore had no impact on the service charges payable in respect of the revised major works; this item was accordingly unchanged from when the Tribunal had found it reasonable in the 2005 determination
69. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £24,322

Internal areas fire precaution works £52,589 (2005 determination PD207 and 208 LAF140 and 141)

70. Miss Dack's comments were that the present conversion works were completely altering the interior of the Building, and were, in some cases, reducing the area of the common parts by building or extending walls into some of the accessways
71. Mr Palfrey's submissions were that the conversion works had no impact on the service charges payable in respect of the internal fire precaution works referred to in the new specification, because all the works referred to, such as smoke detectors, screening and signage, would be the same even if the square footage of the common parts was reduced
72. In answer to questions from the Tribunal, Mr Palfrey confirmed that the Fire Officer had not re-inspected the Building since the date of the original specification in 2003.
73. The Tribunal's findings :
 - a. the Tribunal has taken judicial notice of the fact that fire regulations changed significantly with effect from the 1 October 2006
 - b. the Tribunal has also taken account of the fact that conversion work to the interior of the Building has been, and is being, carried out, with evidence of pipes hanging from ceilings, new walls impinging on common parts, and new doorways
 - c. contrary to Mr Palfrey's submissions, some adjustment to the revised major works is likely to be necessary in respect of this item
 - d. however, there is no evidence before the Tribunal about the nature, extent, or cost of any such adjustment
 - e. the estimated figure in the budget was reasonable at the time the interim service charge was demanded, and any adjustment to the service charge will have to be made at a later date
 - f. in the meantime, the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £52,589

Decorations £45,937 (2005 determination PD209 LAF141 and 151)

74. Miss Simmonds's comments were that the 11 first-floor UPVC windows had already been installed before the Tribunal inspected the Building in 2005. The 11 second-floor UPVC windows had been installed in about November 2006. There had also been a window in the wall which had now been replaced by the ground-floor extension on the eastern elevation
75. In answer to questions from the Tribunal on the first day of the substantive hearing, Mr De Kment said, according to the contemporaneous manuscript notes taken by the Tribunal, that the new windows in the ground-floor extension on the eastern elevation would be UPVC, that the windows to be installed where the ground floor shops were being converted to flats would all be UPVC, and that, although all the windows on the eastern elevation would be replaced with hardwood in accordance with the new specification, "they would all go out and UPVC would be put in"
76. However, on the second day of the hearing, Mr De Kment said that he would be replacing all the windows on the western elevation with hardwood. He had owned the Building for 6 years and had had no money from Miss Dack. He was now proceeding with the conversion works. When he was told that he could proceed with the revised major works then those revised major works would be carried out exactly in accordance with the new specification. He did not recall saying at the first day's hearing that he would install hardwood windows on the eastern elevation and then take them out and replace them with UPVC. He had never had any intention to take out the hardwood windows in the eastern elevation. He would do whatever had been recommended in the new specification. He had only installed UPVC windows on the western elevation as a temporary measure because the existing windows had been rotten. He wanted the whole block to match. What the Tribunal had asked him on the first day of the hearing had been about why he had changed the windows in B2 and C2 to UPVC when the new specification had said something different. His answer had been that he had put UPVC in and would take them out when the major works were done. He did not want to put in one set of windows now and then put in another set later which would not match
77. Ms Dack commented that the Tribunal's record of what Mr De Kment had said the previous day was correct. He must have then said in the heat of the moment what he had really meant
78. Mr Palfrey's submissions were that there had been a misunderstanding the previous day. As soon as that misunderstanding had been brought to Mr De Kment's attention on the second day, he had sought to correct it. There had been talk the previous day at the same time about windows at the front and windows at the back. The new specification was for hardwood at the back. Mr De Kment had said that he would carry out the revised major works in accordance with the new specification, and would change the windows at the front. Credibility had to be looked at in the round on all issues, not just this one. Recollections differed about what had been said the previous day. Mr De Kment had been referring to the western elevation, not the eastern elevation, when he had been talking about changing the windows. It should be borne in mind that if UPVC were taken out and hardwood put back in then Mr De Kment would bear 83% of the cost of any subsequent decorations, and would receive a contribution of only 11% from Miss Dack and 6% from Mrs Spreadbury. It would make no sense to put hardwood frames in and then take them out again, whereas it did make sense to put UPVC windows as temporary replacements for rotten windows, and then replace them with hardwood windows to match all the others
79. Mr Palfrey accepted that the number of windows in issue was 12, namely the 11 second-floor

UPVC windows on the western elevation, and the one window in the wall which had now been replaced with the ground-floor extension on the eastern elevation. There appeared from the photographs to be 96 windows in all. In answer to questions from the Tribunal, Mr Palfrey submitted that if, contrary to his submissions, the Tribunal found against the Respondent/Landlord on the question of his intention to replace the existing UPVC windows on the western elevation with hardwood, it would not be fair simply to reduce the decorations figure by a fraction of 12/96. It was a decoration question, not a window question as such. The decoration figure included other areas of the Building, such as stonework. Neither would it be fair to approach the calculation of any reduction by adopting the figure of £1,200 decided in 2005 at PD209 (LAF141) as a fair reduction for 3 commercial windows because the commercial windows and surrounding stonework involved much more painting than the 12 residential windows, despite the evidence, apparently to the contrary, of Mr Miles on behalf of the Respondent/Landlord at PD56 (LAF117)

80. The Tribunal's findings :

- a. in relation to the question whether or not Mr De Kment intends to replace the 12 UPVC windows with hardwood windows, the Tribunal has taken account of :
 - Mr De Kment's evidence on the first day of the hearing as noted by the Tribunal
 - his assertion on the second day that the Tribunal's note of his evidence on the first day had been the result of a misunderstanding
 - his explanation how that misunderstanding was said to have arisen
 - his evidence on the second day of what was said to be his true intentions
 - Mr Palfrey's submissions
- b. however, having considered all the evidence in the round on a balance of probabilities, the Tribunal finds that :
 - Mr De Kment's evidence in that respect on the second day is unpersuasive
 - his real intention is as recorded by the Tribunal on the first day of the hearing, namely to install UPVC windows
 - he does not intend to replace the 12 UPVC windows in the western elevation with hardwood windows accordingly
- c. there should be a deduction from the estimated cost of this item to take account of the reduction in the number of windows requiring decoration, namely 12
- d. there is no evidence before the Tribunal about the extent to which other windows will be replaced with UPVC, and will accordingly not require decoration, or the consequent impact on costs, and any adjustment to the service charge in that respect will accordingly have to be made at a later date
- e. similarly, there is no evidence before the Tribunal about the extent, if any, to which the conversion works will render any internal decorations in the revised major works unnecessary, or the consequent impact on costs, and any adjustment to the service charge in that respect will, again, have to be made at a later date
- f. the Tribunal notes Mr Palfrey's helpful submission that the total number of windows in the Building is 96, but finds, in addition, that there is a further window not taken into

account by Mr Palfrey in arriving at that total, namely the window in the ground-floor extension on the eastern elevation, and the Tribunal accordingly finds that the total number is in fact 97

- g. the Tribunal has approached the calculation of the reduction by taking into account the following factors :
- Mr Palfrey's submissions in that respect
 - the fact, as the Tribunal finds, that the figure found by the Tribunal to be reasonable for this item in 2005 was £45,937 (PD209 LAF141 and 151), not £27,211 as shown in the Scott Schedule (LAF155) in this respect
 - the fact, as the Tribunal finds, that the application of the proportion of 12 windows out of 97 to the total estimate of £45,937 results in a figure of £5,683
 - the fact, as the Tribunal finds, that the deduction made by the Tribunal in the 2005 determination for 3 commercial windows was £1,200, namely an average of £400 each; that a reasonable figure for each of the, smaller, residential windows would be an average of £300; and that if that average figure of £300 were applied to the 12 windows, the total would be £3,600
- h. having considered all the evidence in the round, and drawing on the Tribunal's collective knowledge and expertise in these matters, the Tribunal finds that an appropriate figure for the deduction is £3,500, and that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £42,477

Provisional sums £18,437 (2005 determination PD210 LAF141)

81. Miss Dack made no comment

82. Mr Palfrey's submissions were that this item was unchanged from when the Tribunal had found it reasonable in the 2005 determination

83. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £18,437

Contingency £3,000 (2005 determination PD 211 LAF141)

84. Miss Dack made no comment

85. Mr Palfrey's submissions were that this item was unchanged from when the Tribunal had found it reasonable in the 2005 determination

86. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £3,000

15.2% uplift £41,360 (2005 determination PD214 LAF141 and 142)

87. Miss Dack made no comments

88. Mr Palfrey's submissions were that the percentage uplift claimed was unchanged from when the Tribunal had found it reasonable in the 2005 determination

89. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the

percentage uplift should be 15.2%, but finds that, as a result of the deductions made in the course of these reasons, that the figure to which the uplift should be applied has been reduced, and that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £40,809, calculated in accordance with the breakdown in the Appendix attached to these reasons

Other items in the service charge budget sheets at LAF263 and 264

Accounting Year ending 25 December 2005

Audit fee £490 (2005 determination £470 PD216 and 257 LAF142 and 147)

90. Miss Dack's comments were that Downs's statement dated the 30 August 2006 (BRB43) was not a proper audit, and so could not be evidence of the reasonableness of the estimate of £490
91. Mr Palfrey's submissions were that the question of whether the document constituted an audit in accounting terms had no impact on whether it was reasonable for the Applicant/ Leaseholders to pay by way of interim service charge the sum estimated as an audit fee in the budget. The sum demanded was broadly in line with the sum which the Tribunal had found to be reasonable in the 2005 determination, and was in line with the actual figure charged by Downs (BRB44)
92. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £490

Cleaning supplies £1,700 (2005 determination £2,226.65 and £3,217.21 PD 218 and 259 LAF142 and 143 and 147)

93. Miss Dack's comments were that Office & General Cleaning were owned by Pamela Shand's husband, who was also a director of Hill Shand. The letter from Pamela Shand dated the 29 July 2005 (BRB56) showed that Office & General Cleaning had stopped cleaning in July 2005, but in fact no cleaning had actually been carried out in the Building since some time before that, by Office & General Cleaning, D'Lite Cleaning Services (BRB57 to 61) or anyone else on behalf of the Respondent/Landlord. The cleaning costs would in any event be less than before because there were no longer drug users in the Building or needles
94. Mr Palfrey's submissions were that these were the same arguments as had been raised in the 2005 hearings (LAF124 and 125) and had been dealt with at PD218 (LAF142). The sum claimed by way of interim service charge was £1,700, which was less than the figures found to be reasonable in the 2005 determination and less than the actual figure paid by the Respondent/Landlord for 2005, as confirmed by Downs's statement dated the 30 August 2006 (BRB43). It was a reasonable figure. The fact that there appeared to be 2 invoices for July 2005 (BRB54 and 57) did not make it unreasonable, because, first, the invoices had been seen and approved by Downs, and, secondly, even if one of the July invoices represented an overpayment, the deduction of one of them would still not bring down the actual figure paid to below the £1,700 estimate demanded by way of interim service charge. The fact that the Respondent/Landlord had changed to a cheaper cleaning contractor showed that the Respondent/Landlord was taking a reasonable approach to the question of service charges
95. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £1,700

Electricity £100

96. This was not in issue before the Tribunal

Fire extinguishers £300

97. Miss Dack's comments were that there were no fire extinguishers in the Building in 2005. The invoice at BRB68 showed extinguishers being delivered in November 2006. Miss Dack had seen the word "conceded" in the Scott Schedule (LAF154) and had assumed that this meant that the Respondent/Landlord had conceded that it was not payable

98. Mr Palfrey's submissions were that the Respondent/Landlord could have called witnesses to answer this point if it had been known in advance that it was in issue

99. In answer to questions from the Tribunal, Mr Palfrey accepted that there was no mention of fire extinguishers in the Downs's statement dated the 30 August 2006 (BRB43) and that there were no invoices relating to fire extinguishers before the Tribunal for the year 2005, but submitted that the only proper inference to be drawn was simply that no such invoices had been submitted to Downs

100. The Tribunal's findings : the Tribunal has taken account of Ms Dack's evidence that there were no fire extinguishers in the Building in 2005, and of the fact, as the Tribunal finds, that there is no reference to fire extinguishers in Downs's statement dated the 30 August 2006 (BRB43), that there are no invoices in 2005 relating to fire extinguishers before the Tribunal, and that there is before the Tribunal the invoice at BRB68 showing extinguishers being delivered in November 2006. Having taken all the evidence into account, the Tribunal finds that it is not reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item

General repairs £1,000

101. Miss Dack's comments were that it was not reasonable to demand £1,000 when only £279.12 was actually paid (BRB43). The leaseholders had not had access to the rear bin area, so that the £15 charged for removal of rubbish (BRB63) should not be included in the service charge

102. Mr Palfrey's submissions were that £1,000 was not rendered an unreasonable sum to be paid by way of interim service charge simply because a lesser sum had subsequently been paid. Any adjustments could be made under the provisions in that respect in the leases when the final year's accounts were submitted. The invoices at BRB 62 and 63 were not duplicates, despite bearing the same date, because their content was different

103. The Tribunal's findings : the Tribunal has taken into account the Tribunal's finding in 2005 that the figure for general repairs and maintenance for the year 2004 was £329.31 (PD261 at LAF147), and the invoices totalling £279.12 in respect of this item referred to in Downs's statement dated the 30 August 2006 (BRB43). Having taken all the evidence into account the Tribunal finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £279.12

Insurance £2,000 (2005 determination £2,296.07 and £1,500 PD250 and 263 LAF145 and 147)

104. Miss Dack's comments were that the insurance premium had reduced to £794 in January 2007 (BRB70) so that £2,000 was not a reasonable sum to pay for 2005

105. Mr Palfrey's submissions were that the Tribunal had found £1,500 to be a reasonable figure for 2004, and £2,000 had therefore been a reasonable estimate for 2005. The Respondent/Landlord had subsequently joined the Southern Landlords' Association, and had

insured his whole portfolio through one broker, which had resulted in a substantial discount, which he had passed on to the Applicant/ Leaseholders. The actual figure for 2005 was £1,941.35 (BRB65 and 66)

106. In answer to questions from the Tribunal, Mr Palfrey accepted that the insurance related to 453 to 457 Christchurch Road (BRB65), and not just to the Building, and that a 25% deduction was appropriate in accordance with the Tribunal's decision in 2005 at PD249 (LAF145)
107. In answer to further questions from the Tribunal, Mr De Kment said that the document at BRB66 was an invoice for the statutory payment to the FSA. He was not himself affiliated to the FSA. He did not know why the document was not on Hill Shand headed paper, but it been passed by Downs. He did not know whether Hill Shand were affiliated to the FSA
108. The Tribunal's findings :
 - a. the premiums allowed by the Tribunal in the 2005 determination were £2,296 for 2003 and £1,500 for 2004
 - b. the actual figure for 2005 was £1,941.35 according to Downs's statement dated the 30 August 2006 (BRB43)
 - c. that figure included insurance for other parts of the property, and the proportion attributable to the Building was 75%
 - d. 75% of £1,941.35 is £1,456.01
 - e. the figure of £1,941.35 includes £106.79 for "obligatory affiliation of [sic] the FSA" (BRB66)
 - f. an FSA affiliation fee would normally be payable by the broker or agent who arranged the insurance
 - g. the invoice in that respect at BRB66 is not on headed paper but purports to be from Hill Shand to the Respondent/Landlord
 - h. there is no evidence before the Tribunal that Hill Shand or the Respondent/Landlord are affiliated to the FSA
 - i. there is no evidence before the Tribunal that Hill Shand or the Respondent/Landlord arranged the insurance
 - j. there is no reference in the invoice to any broker or agent who might have arranged the insurance
 - k. if the insurance was arranged through a broker, it is not clear why Hill Shand were invoicing the Respondent/Landlord for the affiliation fee, or why the Respondent/Landlord paid that invoice, and it may well be that an adjustment to the service charge will have to be made at a later date
 - l. in the meantime, the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £1,456.01

Management fees £2,820 (2005 determination £2,820 PD267 LAF148)

109. Miss Dack's comments were that there had been no management of the Building
110. Mr Palfrey's submissions were that the Respondent/Landlord could have called witnesses to

answer this point if it had been known in advance that it was in issue. Miss Dack had stated that she had received no correspondence from Hill Shand, but had then acknowledged that she had received a notice from Hill Shand under section 146 of the Law of Property Act 1925. It was clear from the invoices for cleaning and repairs that the Building was indeed being managed. Hill Shand had managed the Building throughout this period, and were still doing so. Dale & Dale were instructed to recover outstanding rent and service charges, whilst Hill Shand were managing agents. The figure for management fees in the budget was based on the finding of the Tribunal in 2005, calculated at £200 a unit plus VAT. There were still 12 relevant units despite the reference at PD139 (LAF130) to the 12 units including a shop. The actual figure charged by Hill Shand, namely £4,545 (Downs's statement dated the 30 August 2006 (BRB43)) was a matter of discussion between the Respondent/Landlord and Hill Shand

111. The Tribunal's findings : the Tribunal accepts Mr Palfrey's submissions, and finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £2,820

Accounting Year ending 25 December 2006

Audit fee £490 (2005 determination £470 PD216 and 257 LAF142 and 147)

112. Miss Dack had no further comments

113. Mr Palfrey made no further submissions

114. The Tribunal's findings : the Tribunal finds that the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £490, for the same reasons as already given in relation to the 2005 figure

Cleaning supplies £1,700 (2005 determination £2,226.65 and £3,217.21 PD218 and 259 LAF142 and 143 and 147)

115. Miss Dack had no further comments

116. Mr Palfrey made no further submissions

117. The Tribunal's findings :

- a. there are no invoices before the Tribunal in relation to cleaning in 2006
- b. a reasonable estimate in May 2006 would have taken into account the change in July 2005 from Office & General Cleaning to D'Lite Cleaning Services (BRB56 and 57)
- c. the D'Lite Cleaning Services charge rate was £25 a week (BRB57 to 61)
- d. 52 weeks at £25 a week is £1,300
- e. the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £1,300

Electricity £100

118. This was not in issue before the Tribunal

Fire extinguishers £300

119. Miss Dack had no further comments

120. Mr Palfrey made no further submissions

121. The Tribunal's findings :

- a. the sum of £254.74 was paid on the 5 February 2007 for the supply of fire extinguishers in November 2006 (BRB68)
- b. it was reasonable to have estimated in May 2006 that that sum would be paid in 2006
- c. there is no evidence before the Tribunal of any other payments or proposed payments in relation to fire extinguishers in 2006
- d. the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £254.74

General repairs £1,000

122. Miss Dack had no further comments

123. Mr Palfrey made no further submissions

124. The Tribunal's findings : the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £279.12, for the same reasons as already given in relation to the 2005 figure

Insurance £2,000 (2005 determination £2,296.07 and £1,500 PD250 and 263 LAF145 and 147)

125. Miss Dack had no further comments

126. Mr Palfrey made no further submissions

127. The Tribunal's findings :

- a. the only evidence before the Tribunal subsequent to the evidence in relation to 2005 is the schedule dated the 9 January 2007 at BRB70
- b. that schedule shows a premium for 453 to 457 Christchurch Road of £794.98
- c. there is no evidence before the Tribunal about the date when the Respondent/Landlord changed insurance brokers to the brokers who produced the schedule at BRB70
- d. having considered all the evidence actually before the Tribunal, the Tribunal finds that a reasonable estimate in May 2006 of the likely insurance costs for 2006 would have been based on similar figures to those in the schedule at BRB70
- e. the proportion of the £794.98 attributable to the Building is 75%, for reasons already given, giving a figure of £596.24
- f. the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £596.24

Management fees £2,820 (2005 determination £2,820 PD267 LAF148)

128. Miss Dack had no further comments

129. Mr Palfrey made no further submissions

130. The Tribunal's findings : the amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to

this item is £2,820, for the same reasons as already given in relation to the 2005 figure

Section 20C application

131. The Tribunal referred to the finding in the 2005 determination that that there was no provision in the leases entitling the Respondent/Landlord to include in a service charge his costs of the proceedings before the Tribunal (PD270 at LAF149)
132. Mr Palfrey asked the Tribunal to reconsider that finding. The Respondent/Landlord's costs of these proceedings were recoverable under clause 5(5)(g)(ii) of the leases as part of the "proper maintenance safety and administration of the Building". The carrying out of the revised major works was necessary for the proper maintenance safety and administration of the Building. The carrying out of the revised major works was dependant on the service charges being paid. **Sella House v Mears** decided that a similar lease provision was not wide enough to cover the costs of administering the tenant. In this case, however, the costs were costs of administering the Building
133. The Tribunal's findings : with respect to Mr Palfrey, his submissions were in effect the same as those before the Tribunal in 2005, and the Tribunal finds that the Applicant/Landlord's costs of the proceedings before the Tribunal are not payable by way of service charge for the same reasons as are set out at PD270 (LAF149)

Summary

Revised major works figures:

134. The amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £363,418
135. A breakdown is set out in the Appendix to these reasons

Other items 2005

136. The amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £6,845.13
137. A breakdown is set out in the Appendix to these reasons

Other items 2006

138. The amount in respect of which it is reasonable under section 19(2) of the 1985 Act for the Applicant/ Leaseholders to pay an interim service charge in relation to this item is £5840.10
139. A breakdown is set out in the Appendix to these reasons

Amounts payable

140. The sums payable by way of interim service charge are :
- a. Miss Dack £20,685.67
 - b. Mrs Spreadbury £11,283.09
141. A breakdown in each case is set out in the Appendix to these reasons

Forfeiture proceedings

142. The Tribunal has noted that the Respondent/Landlord has issued forfeiture proceedings against Miss Dack for non-payment of the sum claimed by way of interim service charge
143. The Tribunal has also noted a number of factors which the court might wish to take into account when considering any claim by Miss Dack for relief against forfeiture :
- a. the sum claimed by the Respondent/Landlord in this respect relates to an interim service charge demand for substantial sums including estimated costs not yet incurred by the Respondent/Landlord in relation to proposed major works
 - b. if the costs had already been incurred, the amount payable by Miss Dack would, as found by the Tribunal in these reasons, have been capped at £250 for failure to comply with the requirements of section 20 of the 1985 Act
 - c. the estimated costs include substantial sums for preliminaries and provisional sums which will require adjustment when the proposed major works have been carried out, and other sums, such as roofing works and fire precautions work, which may also require adjustment
 - d. there is no evidence before the Tribunal about when the proposed major works will start, although in relation to the substantial conversion works now in progress the Tribunal has heard evidence from the Respondent/Landlord, in the context of whether there would be any duplication in such matters as preliminaries and protective fans and sheeting, that the conversion works will finish before the proposed major works will start

Section 20C application

144. The Applicant/Landlord's costs of these proceedings are not payable by the Respondent/Leaseholders by way of service charge, and the Tribunal makes no order in respect of those costs accordingly

Dated the 24 August 2007



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LSC/2006/0097

Flats B3, and D2453 Christchurch Road, Boscombe, Bournemouth, BH1 4AD

Appendix

	Description	Payable	Not payable	Applicant/Landlord's claim
Revised major works				
	preliminaries	£13,000.00		£13,000.00
	skips	£1,000.00		£1,000.00
	fans/sheeting	£29,600.00		£29,600.00
	roof etc	£84,098.00	£125.00	£84,223.00
	windows	£24,322.00		£24,322.00
	fire precautions	£52,589.00		£52,589.00
	decorations	£42,437.00	£3,500.00	£45,937.00
	provisional sums	£18,437.00		£18,437.00
	contingency	£3,000.00		£3,000.00
	sub total	£268,483.00	£3,625.00	£272,108.00
	uplift	15.2% x 268483 say		15.2% x 272108
		£40,809.00		£41,360.00
	sub total	£309,292.00		£313,468.00
	VAT	17.5% x 309292 say		17.5% x 313468
		£54,126.00		£54,857.00
total		£363,418.00		£368,325.00
			say	£368,000.00

2005 Interim Service Charge	Description	Payable	Not payable	Applicant/Landlord's claim
	audit	£490.00		£490.00
	cleaning	£1,700.00		£1,700.00
	electricity	£100.00		£100.00
	fire extinguishers		£300.00	£300.00
	repairs	£279.12	£720.88	£1,000.00
	insurance	£1,456.01	£543.99	£2,000.00
	management	£2,820.00		£2,820.00
Total		£6,845.13	£1,564.87	£8,410.00

2006 Interim Service Charge	Description	Payable	Not payable	Applicant/Landlord's claim
	audit	£490.00		£490.00
	cleaning	£1,300.00	£400.00	£1,700.00
	electricity	£100.00		£100.00
	fire extinguishers	£254.74	£45.26	£300.00
	repairs	£279.12	£720.88	£1,000.00
	insurance	£596.24	£1,403.76	£2,000.00
	management	£2,820.00		£2,820.00
Total		£5,840.10	£2,569.90	£8,410.00

**Sums payable by Miss Dack
Interim service charges 2005 and 2006**

	Claimed due date	Description of claim and claimed calculation	Payable calculation	Payable	Not payable	Applicant/ Landlord's claim
Demand 26 May 2006	25.12.04	1st int s/ch y/e 25.12.05 half of 11% of £8410	.	NIL	£462.55	£462.55
	24.06.05	2nd int s/ch y/e 25.12.05 half of 11% of £8410	half of 11% of £6845.13	£376.48	£86.07	£462.55
	25.12.05	1st int s/ch y/e 25.12.06 rev maj works £368000 other items 8410 total £376410 half of 11% of £376410	.	NIL	£20,702.55	£20,702.55
			Sub-totals	£376.48	£21,251.17	£21,627.65
Demand 30 June 2006	24.06.06	2nd int s/ch y/e 25.12.06 rev maj works £368000 other items 8410 total £376410 half of 11% of £376410	£363,418.00 £5,840.10 £369,258.00 half of 11% of £369258	£20,309.19	£393.36	£20,702.55
			Totals	£20,685.67	£21,644.53	£42,330.20

**Sums payable by Mrs Spreadbury
Interim service charges 2005 and 2006**

	Claimed due date	Description of claim and claimed calculation	Payable calculation	Payable	Not payable	Applicant/ Landlord's claim
Demand 26 May 2006	25.12.04	1st int s/ch y/e 25.12.05 half of 6% of £8410	.	NIL	£252.30	£252.30
	24.06.05	2nd int s/ch y/e 25.12.05 half of 6% of £8410	half of 6% of £6845.13	£205.35	£46.95	£252.30
	25.12.05	1st int s/ch y/e 25.12.06 rev maj works £368000 other items 8410 total £376410 half of 6% of £376410		NIL	£11,292.30	£11,292.30
			Sub Totals	£205.35	£11,591.55	£11,796.90
Demand 30 June 2006	24.06.06	1st int s/ch y/e 25.12.06 rev maj works £368000 other items 8410 total £376410 half of 6% of £376410	£363,418.00 £5,840.10 £369,258.00 half of 6% of £369258	£11,077.74	£214.56	£11,292.30
			Totals	£11,283.09	£11,806.11	£23,089.20