1. The reasons in this matter were sent to the parties on 10 April 2007. On 24 April 2007 the applicant sent the Tribunal a letter headed "*application to appeal re – factual errors and the corrections required in the decision document*".

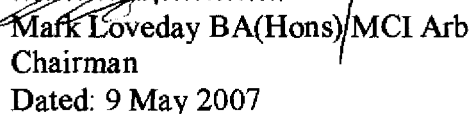
2. Insofar as this document purports to be an application for permission to appeal, the application is refused. The reasons are:

    (a) An appeal from a "decision" of this Tribunal lies to the Lands Tribunal under s.175 Commonhold and Leasehold Reform Act 2002.

    (b) An appeal lies from an order of a court, not against the reasons which it gave along the way. The same applies to any appeal under s.175 of the 2002 Act.

    (c) The applicant's letter dated 24 April 2007 states "*the basis of this APPEAL is not to question the panel's CONCLUSIONS paras 28 thro' 30, but rather to request that the document be reissued with the paragraph corrections as requested herein...*"

6. The Tribunal Chairman has, however, issued a certificate of correction under paragraph 18(3) of the Leasehold Valuation Tribunal (Procedure) (England) regulations 2003.



Mark Loveday BA(Hons) MCI Arb
Chairman
Dated: 9 May 2007

CHI-21UC-LSC-2006-0052

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

CERTIFICATE AMENDING THE DETERMINATION OF 28 MARCH 2007 UNDER REGULATION 18(7) OF THE LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003

9 SOL-Y-VISTA, FRITH HILL ROAD, GODALMING, SURREY

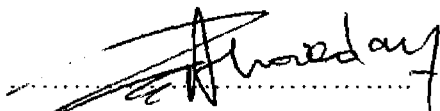
Applicant: SUZAN AUDRAS (Lessee)

Respondent: VISTA MANAGEMENT LTD (Landlord)

Date of hearing: 21 March 2007

In paragraph 16 line 9 delete "*Respondent*" and insert "*Applicant*".

In paragraph 27 line 10 delete "*EGM*" and insert "*AGM*".



Mark Loveday BA(Hons) MCI Arb

Dated: 9 May 2007

CHI-21UC-LSC-2006-0052

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A & SECTION 20C OF THE LANDLORD AND TENANT ACT 1985 AND SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

9 SOL-Y-VISTA, FRITH HILL ROAD, GODALMING, SURREY

Applicant: SUZAN AUDRAS (Lessee)

Respondent: VISTA MANAGEMENT LTD (Landlord)

Date of hearing: 21 March 2007

Date of inspection: 21 March 2007

Appearances: The Applicant, in person

Gordon Pasque (Director and lessee of 2 Sol-Y-Vista)
Paul Martin of FlatFocus Management Ltd for the Respondent

Members of the Leasehold Valuation Tribunal:

Mr M Loveday BA(Hons) MCIArb
Mr D Lintott FRICS
Mr T Sennett MA FCIEH

BACKGROUND

1. These are linked applications in respect of a maisonette in Godalming. The applicant is the lessee of 9 Sol-Y-Vista, Frith Hill Road. The Respondent is the freehold owner, a company owned by the lessees of the maisonettes.

2. On 27 September 2006 the applicant applied to the Tribunal for a determination under section 27A of Landlord and Tenant Act 1985 in respect of her liability to pay service charges for the period from 1 October 2003 to 30 September 2006 and in respect of estimated charges for the period from 1 October 2006 to 30 September 2007. Directions were given at a pre-trial review on 23 November 2006. On 27 November 2007, the applicant also submitted an application for the appointment of a manager under s.24 of the Landlord and Tenant Act 1987.

3. The Tribunal was provided with the lease for 9 Sol-Y-Vista dated 19 September 1967. The lease included provisions at clauses 1 and 5 for the recovery of a service charge. Clause 1 included a provision for payment of an advance charge on 29 September in each year at the same rate as the actual service costs in the preceding year. Clause 5 provided for the service costs to be calculated in each year, for annual service accounts to be sent to the lessee as soon as possible after 29 September in each year and for balancing charges to be made.

4. At the outset of the hearing the applicant agreed that the relevant costs in dispute in each of the service charge years from 1 October 2002 to 30 September 2006 were recoverable under the terms of the lease. Since the rate of the advance charge was fixed by the lease, the applicant agreed to withdraw her application in respect of the year 2006-7 (although she reserved the right to make a fresh application in relation to 2006-7 after the annual service accounts are served and the actual expenditure is known). The sole basis of challenge under section 27A of the 1985 Act was therefore that the relevant costs in the service charge years 2002/3, 2003/4, 2004/5 and 2005/6 were not reasonably incurred under s.19 of the Act.

5. In relation to the application for the appointment of the manager, the applicant accepted that no notice has been served under s.22 of the 1987 Act, and that by

virtue of section 22(1) the Tribunal did not ordinarily have jurisdiction. However, she applied under section 22(3) for an order dispensing with service of the notice. It was agreed that this application would be dealt with as a preliminary issue.

INSPECTION

6. The Tribunal inspected the subject premises before the hearing. Sol-Y-Vista is located in a pleasant residential area of Godalming and comprises a terrace of 14 two and three storey maisonettes c.1970 with brick cavity walls and felt covered flat roofs. The layout is somewhat complex, largely as a result of the site – at this point Frith Hill Road runs along the side of a hill which slopes sharply down into a wooded valley below. At the front (facing Frith Hill Road) each maisonette has a garage at first floor level accessed over a separate small bridge to the road. The front door of 9 Sol-Y-Vista is down steps from this level to the ground floor where there is a series of terraces and voids which run under the bridges. These terraces include rainwater gulleys and drainage and there are several mature trees set into the edge of these terraces. Internally, 9 Sol-Y-Vista is on 2 levels and comprises 2 bedrooms, WC, kitchen and living/dining area. To the rear (overlooking the valley) are sliding doors to a patio and terrace. Beyond part of the terrace is a 20ft drop faced with cement and brick and a steeply sloping grassy area below. The hillside rises at one point so that it is directly accessible from the terrace down a few short steps. However, at the time of the inspection these steps were blocked with laurel and box. Beyond the grassy area is extensive woodland falling down into the valley which forms part of Sol-Y-Vista. The exterior condition of Sol-Y-Vista is good and the gardens and grounds appeared neat and well tended.

DISPENSATION WITH s.24 NOTICE

7. At the end of the hearing of the preliminary issue, the Tribunal gave an oral decision under paragraph 18(2) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003 refusing to dispense with service of a s.24 notice. The reasons are given below.

8. Then relevant provision of the 1987 Act is as follows:

> "22(3) *a leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person ...*"

9. The applicant relied on the grounds set out in a memorandum to the Tribunal dated 13 January 2007. She explained that the issue of the application for the appointment of a statutory manager first arose at the directions hearing. She had completed the application form on the same day and the Respondent was well aware of the application at that time. The Applicant had not been available in December 2006 and for much of January 2007. There was no point in serving a s.22 notice because the Respondent had shown in the past that it would not consult or mitigate the situation. The Respondent had had ample opportunity to address the issues involved and serving a notice was neither "*reasonably practicable, workable nor realistic*".

10. The Respondent was represented at the hearing by Mr Martin of Flatfocus Management, the managing agents. He stated that the Respondent's registered office was originally at 4 Sol-Y-Vista. However, when FlatFocus assumed management in February 2006, the registered office was changed to the manager's registered office address at Mallards House, 31 Pullman Lane in Godalming. The offices were open during weekdays from 9am-5pm and there was a 24-hour answering machine service. The offices had a letterbox to the street. All correspondence with the lessees gives the office address and a Post Office Box address – Mr Martin citing by way of example letters to the Applicant dated 23 February and 24 August 2006. The Applicant was fully aware of the managing agent's address, had written and sent emails on numerous occasions to the Respondent throughout the course of the proceedings and personally knew each of the Directors. There was nothing urgent about the application. He submitted it was "*reasonably practicable*" for the Applicant to have served notice.

11. The Tribunal declines to dispense with the requirement for a notice. The discretion under s.22(3) is a limited one. The test is not whether it is "reasonably

practicable, workable or realistic" to give notice, it is simply whether it was "reasonably practicable" to do so. This is plainly intended to cover situations such as missing landlords or where urgent works are required and the situation is such that it is not practicable to serve notice. In this case, there is no suggestion that the Applicant could not have ascertained the correct registered office for the Respondent through Companies House or that the Respondent was evading service of notices. The managing agents were well known to the Applicant and the respondent herself used their address for correspondence. The Directors were her neighbours and she knew who they were. There was no urgency to the application to appoint. Indeed, no attempt was made to serve the notice between November 2006 and March 2007. It was therefore abundantly clear that it was "reasonably practicable" to have served notice.

REASONABLENESS OF THE SERVICE CHARGES

12. It was common ground that the Respondent did not produce separate service charge accounts for each year. The practice was for individual heads of expenditure to be set out in a Schedule to the Income and Expenditure account of the Respondent's company accounts. These heads of expenditure were then divided by one fourteenth to arrive at the figure for the individual charges to be met by each lessee. The bundles included such schedules for 2002/3, 2003/4 and 2004/5 and a draft Schedule for 2005/6 was produced at the hearing (which the Applicant did not object to). These statements formed the basis of the application under s.27A.

13. The applicant relied on three statements and supporting documents which contained a great deal of detail. These arguments were summarised in Part B of her second statement by reference to the relevant costs in each service charge year, and Applicant elaborated on these arguments during the hearing.

14. At the outset, the Applicant stated that she was not putting forward a positive case that the costs were not reasonably incurred. The application had principally been made because she had not had access to the books and vouchers underpinning the relevant costs. She asked that the Respondent should justify

that the costs were reasonably incurred. However, the Applicant specifically objected to the following relevant costs:

(a) 2002/03: grounds maintenance (£32), tree surgery (£499), drain maintenance (£682) and insurance (£156).

(b) 2003/04: grounds maintenance (£1,586), window cleaning (£1,022) and insurance (£163).

(c) 2004/05: grounds maintenance (£2,045), window cleaning (£916), property maintenance (£557) and insurance (£164).

(d) 2005/06: grounds maintenance (£1,447), window cleaning (£623), repairs (£1,003), insurance (£178) and managing agents (£1,207).

15. The 2002/05 years can be taken together. As for grounds maintenance, the Applicant argued that the gardening contractors had been incompetent. She relied on details set out in a letter of 28 July 2003. This stated that on 15 July 2003, gardeners had cut mature shrubs adjoining her terrace which provided shelter and security for her maisonette. They had also gone onto the terrace of her neighbour at no. 10 and cut down the hedge – allegedly on the basis that it was infested with rats. She disputed that there was any such problem with rodents. In January 2004, the gardeners had "spitefully" cut down a butterfly tree – as described in a memo dated 16 January 2004. This tree "belonged to" the Applicant and was located a few inches in front of her perimeter hedge. In addition, the gardeners did not clear acorns and leaves from the garage roofs and forecourt. Other examples cited were that the gardeners simply blew leaves from one part of the property to another rather than remove them, and that they cut rather than uprooted saplings. As for drains maintenance, as far as the Applicant was aware, no such maintenance was carried out in 2002/3 or 2003/04. Window cleaning costs also varied, and the contractors tended to come in the winter (when cleaning was not needed) rather than in the summer (when it was). As far as insurance is concerned, the Applicant appreciated that public liability insurance was necessary for the property, but the cost seemed excessive. Each lessee insured their own maisonette. Finally, the Applicant raised the issue of a sum of £260 which was incurred in respect of painting fencing in the 2004/05 service charge year. There is a heavily annotated letter dated 24 February 2005 in respect of this cost. Notwithstanding the concession

made at paragraph 4 above, the Applicant contended that these costs were not recoverable under the terms of the lease because they were works to individual flats outside the landlord's repairing covenants. There had been litigation and the issue of liability had been resolved by the County Court which found that the fencing did not belong to the Respondent.

16. Dealing with the 2005/06 relevant costs, the Applicant repeated the above objections to the gardening and window cleaning. On 12 July 2006, the gardeners had gone onto the terrace of no.9 and killed a honeysuckle plant and ivy. The gist of the complaint is set out in a letter dated 6 September 2006. In particular, however, objection was made to the cost of employing the managing agents. The previous agents, Clark Gammon, were replaced by FlatFocus in 2006. There was a sharp increase in these costs from 2004/05 and there had been no proper consultation with lessees about this. At the end of the hearing, the Respondent produced evidence of the reasonable cost of management (which the Respondent did not object to). One agent gave an oral estimate of £1,400 for managing the property and another gave a written estimate of £1,000 + 15% of the outgoings + VAT. The latter would charge an additional £500 for arranging the company AGM.

17. In response, Mr Martin relied on a single statement with exhibits. He gave evidence and made submissions, and also relied upon evidence given by Mr Pasque, a Director of the Respondent Company.

18. The Respondent stated that for many years the management had effectively been shared between the Directors, (principally a Mr Emerick), and Clark Gammon, in order to save costs. The company accounts were certified and audited every year by accountants (the accountants changed in 2003). Of the 2002/03 costs, the cost of ground maintenance was relatively small because there had been problems finding a gardener. Little work had been carried out that year. However, in that year a large pine tree had been felled. Mr Emerick had obtained 2-3 quotations for this work and had chosen the cheapest. The Respondent did not always use the same tree surgeon; it always tendered for this work. The window cleaning was currently carried out by a firm called A&L

Cleaning Contractors Ltd of Sudbury. There had been a problem with the previous window cleaners in 2002 and the Applicant had introduced this firm. The cleaners came every 2 months, cleaning every exterior window on the valley side of Sol-Y-Vista and the windows on the road side beside the front doors. FlatFocus had looked at getting in other contractors but without success. Receipts for the window cleaning were produced for the period from November 2003. In 2004 the rate increased from £120 +VAT per visit to £130 + VAT. There is a contract (but no copy was produced). As far as drains maintenance is concerned, the Respondent produced invoices from Acorn Drainage for high pressure jetting of gulleys and drain runs in 2005, repairs to pipe work and so on. Insurance was for the freehold and common parts only. The leases specified that the leaseholders' own insurance must be placed through Alliance Insurance Co (now Royal & Sun Alliance) and it was sensible to place the freehold insurance with the same insurer. The insurance was placed with Royal & Sun Alliance directly (rather than through brokers). No policy schedules or receipts were provided. In 2003/04, grounds maintenance costs increased significantly because (after a lot of phoning around) the Respondent found a contractor prepared to carry out the work. Invoices from Lakeland Landscapes for the period April 2004 to May 2006 were produced. There was a contract, but this was not produced to the Tribunal. From May 2006, a new firm "We're in the Garden" had been introduced by the agents. They were cheaper than Lakeland and they also have a contract. Lakeland increased their charge per visit in 2004/05 and they attended more frequently. This was the reason that the Respondent had re-tendered the work in 2006. The cost of window cleaning varied in each year because the invoices rendered did not always fit neatly into a given service charge year. The cost of property maintenance in 2004/05 was for drain maintenance, and copies of invoices were produced. There was a small discrepancy between the figure in the account and the invoices which was made up of a TV aerial. The Respondent was unable wholly to reconcile the repairs costs for 2005/06 but believed that the difference was made up by a building survey and a new padlock for a service cupboard. As for the specific criticisms of the gardeners, the decision had been made at a Board Meeting on 9 July 2003 to trim back the laurel and other bushes outside the rear of the property. The contractors had standing instructions not to go onto the leaseholders' own areas.

When the Applicant complained, Mr Pasque had written to the gardeners to reinforce this. However, the other side of the coin was that the plants on the Applicant's land tended to become overgrown – for example the ivy had encroached on her neighbour's land and it had to be cut back. The £260 painting costs were never invoiced to the Respondent and did not appear in the accounts.

19. The Respondent accepted that it had not provided all the books and vouchers requested by the Applicant. This was explained as follows. FlatFocus was first employed in January 2006. Mr Martin attended the AGM of the Respondent on 30 May 2006. At that meeting, the Applicant requested all vouchers and receipts, and the Respondent offered to provide them. However, at the end of the meeting, the Applicant announced she was issuing the application to the Tribunal. Mr Pasque stated that the Respondent therefore decided to withdraw the offer to provide details of expenditure.

20. As far as the appointment of the managing agents is concerned, Clark Gammon simply did not want to carry on. The Directors made enquiries with other agents locally and selected FlatFocus, whose price was lower than other agents. It should be stressed that FlatFocus provided a full service covering both the work carried out by Clark Gammon and Mr Emerick. The Respondent produced a copy of the management agreement. The fees were £100 per flat. Mr Martin visited the property every 3 months, and his fees included the preparation of audited accounts which were subcontracted to a firm of accountants. FlatFocus was not an IRMA member although it followed IRMA guidance. He was aware of the RICS Code and au fait with s.20 consultation procedures.

DETERMINATION

21. It is for the Applicant to give evidence establishing a prima facie case that the costs were not reasonably incurred. Only then does the burden pass to the respondent to show that the costs were reasonably incurred: per Wood LJ in ***Yorkbrook v Batten*** [1995] 2 EGLR 100, CA. Section 19 requires the Tribunal to adopt a two stage test – a consideration of both the landlord's decision-making process, and a consideration of whether there is evidence of the relevant

costs are out of line with the market norm: ***Forcelux v Sweetman*** [2001] 2 EGLR 173.

22. In this case, the Tribunal bears in mind three general points about the relevant costs in issue. First, all these costs have been the subject of audited accounts (or in the case of the 2005/06 accounts draft audited accounts). There is no question that all the disputed costs were "incurred" by the Respondent. Second, the Tribunal bears in mind that the Respondent is a small leaseholder-owned landlord. There is a powerful incentive on the part of the Directors to ensure that costs are reasonably incurred. Finally, apart from the evidence given by the Applicant in respect of the cost of the agents, the Applicant has not produced evidence to show that the relevant costs are excessive compared to those charges made by other comparable contractors.

23. Adopting the two stage test above, the Tribunal is satisfied that there is nothing in the Respondent's decision-making process so as to render any of the relevant costs unreasonable. There is evidence that in relation to cleaning, grounds maintenance and tree surgery, the Directors and managing agents conducted periodic market testing of services. Similarly, the Directors did seek alternative quotes before appointing the new managing agents in 2006. With small scale contracts such as these, and in an area such as Godalming, the range of possible contractors and agents is small, so one would not expect to see the kind of periodic re-tendering exercise which would be more appropriate with larger contracts. There is evidence that most of the contractors had written contracts – although only the contract for FlatFocus was produced. In the case of the window cleaners the contractor was introduced by the Applicant. The insurance was not market tested, but the costs are modest and it is not unreasonable to use one insurer for all policies under the leases.

24. The thrust of the Applicant's submissions, however, was that the individual costs were out of line with the market norm – and in many instances the services provided were defective. Our conclusions are as follows:

    (a) Grounds maintenance. It was not challenged that the contractors visited every 2 months and charged between £1,400 and £2,000 per annum.

The grounds of Sol-Y-Vista are extensive. On inspection, it was clear that the gardening work required (including cutting grass on sloping hills, maintenance of shrubbery, leaf removal and so on) is considerable. On the face of it, a charge of £250 per visit is modest. The Tribunal considers that between such visits, it is not unreasonable for quantities of leaves etc to build up on the garage roofs and elsewhere. As far as the particular instances of alleged negligence and trespass by the contractors, it is noted that the Applicant has complained about two different contractors over a period of time. The trimming of plants in 2003 and 2004 appear to relate to plants which are outside the Applicant's land, irrespective of whether she considers that they are her property or whether the Applicant wishes to provide herself with additional shelter and security. The Tribunal is satisfied that the Respondent has taken precautions to ensure contractors do not go onto the Applicant's property and insofar as the Applicant's own plants may have been trimmed back, it appears this was done to control their encroachment over the boundary. There is no suggestion a claim for trespass has been raised by the Applicant against the contractors – and it may be that any loss to her is more properly recoverable through the courts.

(b) Tree surgery. The Respondent did give an explanation as to this cost.

(c) Window cleaning. On inspection, the number of windows to be cleaned and access (particularly on the valley side) suggests that a cost of between £600 and £1,000 per annum is not excessive. The Tribunal does not consider it is unreasonable to clean the windows in the winter as well as the summer.

(d) Drain maintenance. No serious challenge was made to this other than the assertion that drain maintenance was not actually carried out. The audited accounts suggest that the work was in fact carried out – albeit that not all the receipts have been produced.

(e) Insurance. It is clear from the potentially hazardous nature of the grounds that public liability insurance is highly advisable. Although no copies of policy schedules or receipts have been provided, this really is a very modest cost for insurance.

(f) Maintenance. The Tribunal is concerned that the managing agent was unable properly to reconcile the amounts included in the draft 2005/06 accounts. However, the discrepancy is relatively modest, and the draft accounts suggest that these costs were incurred.The Applicant's own evidence was that comparable or higher charges would have been made by other agents. The Tribunal finds these costs were reasonably incurred.

(g) There is no evidence in the accounts to suggest that a sum of £260 for painting of fences was added to the service charges for 2005/06.

25. In short, the application under section 27A of the Landlord and Tenant Act 1985 fails. All the costs set out above are payable.

s.20C

26. The Respondent indicated that it would seek to add its costs of the proceedings before the Tribunal to the service charges (mainly Mr Martin's costs). At this stage, no issue of whether those costs are recoverable under the lease arises. The Applicant has made an application under s.20C of the 1985 Act and the Tribunal has regard to the guidance given by the Lands Tribunal in ***Tenants of Langford Court v Doren*** (2001) LRX/37/2000 in this respect.

27. Is it "*just and equitable*" to order that all or part of the costs should not be added to the service charges? The Applicant has obviously failed in her application, and this is a highly material consideration. Moreover, it was not suggested that it was reasonable for Mr Martin to be retained to conduct the matter. Indeed, the manner in which the Applicant pursued the application made proper preparation difficult. However, the Tribunal also notes that the Applicant repeatedly stated that one of her main complaints was that she had been denied access to accounts and expenditure vouchers. The Tribunal was surprised to find that this was not only the case, but that this was a deliberate decision made by the Respondent following the EGM in 2006. The conduct of the Respondent leading up to the issuing of this application is plainly material to s.20C. The default was compounded by the late production of the draft 2005/06 service charge accounts (as noted above, the lease requires accounts as soon as possible after 29

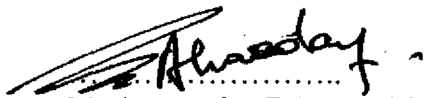
September). The Tribunal considers it is likely the application would still have been pursued had the vouchers been produced, but that the hearing would have been much shorter. It therefore orders that 50% of the reasonable costs incurred by the Respondent before the Tribunal should not be added to the service charge.

CONCLUSIONS

28. The application under section 24 of the Landlord and Tenant Act 1987 is refused.

29. The application under section 27A of the Landlord and Tenant Act is refused. One fourteenth of the relevant costs set out above are payable by the Applicant to the Respondent.

30. Under section 20C of the Landlord and Tenant Act 1985, one half of the Respondent's costs before the Tribunal shall not be added to the service charges.



Mark Loveday BA(Hons) MCI Arb
Chairman
Dated: 5 April 2007