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LON/00BE/LSC/2006/0402

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicants: Ms J Golloghly
Ms G Griffin
Mrs B Lee
Mr C Sinclair

Respondent: London Borough of Southwark

Re: 59, 61, 61A and 65 Darwin Street, London SE17 1EZ

Application received: 11 November 2006

Hearing date: 18 April 2007

Appearances:

(for Applicants)
Mr S Marsh - of Counsel (for Ms Golloghly, Ms Griffin And Mr Sinclair)
Mr Baron) College of Law Representation
Mrs Kaye) Service (for Mrs Lee)
Mr M L Kemp MRICS, Cardoe Martin Limited, Chartered Building Surveyors

(for Respondent)

Mr J Joseph
Mrs A Fedeli MRICS (Mouchel Parkman)
Mr J Hughes MRICS (Mouchel Parkman)
Mr E Emakpose
Mr MSkelly MRICS, Potter Raper Partnership

Members of the Leasehold Valuation Tribunal:

Mrs F Burton LLB LLM MA
Mr C Kane FRICS
Ms S Wilby

LON/00BE/LSC/2006/0402

59, 61 , 61A AND 65 DARWIN STREET, LONDON SE17 1EZ

BACKGROUND

1. This was an application dated 11 November 2006 under ss 27A and 20C of the Landlord and Tenant Act 1985 for determination of liability to pay service charges and limitation of the Landlord's costs in respect of 4 flats at the subject property. An oral pre trial review was held on 6 December 2006 when Directions were issued identifying the items in issue to the cost and quality of external decorations carried out in 2003 at a total cost of £14, 924.81 per flat invoiced on 15 March 2004. Following issue of the Tribunal's standard Directions the case was set down for hearing on 18 April 2007 at 1.30pm with an inspection on the same morning.

THE INSPECTION

2. The Tribunal duly inspected the property which was found to be a low rise development comprising a four storey 1960s block of 14 flats under a pitched roof, and consisting of 3 bedroom maisonettes. On behalf of the Respondent Landlord, the London Borough of Southwark, Mr J Joseph, Mrs A Fideli MRICS (Mouchel Parkman) the Council's Surveyor, and Mr J Hughes MRICS (Mouchel Parkman) the Council's Building Surveyor, and Mr E Emakpose (the Council's Investment Programme Managing Officer) accompanied the inspection, which was conducted by the Applicants, Ms G Griffin (Flat 61A), Mr Golloghly (representing his daughter, Ms J Golloghly, the Tenant of Flat 59), Mrs B Lee (Flat 61) and Mr C Sinclair (Flat 65A). Mr Baron and Mrs Kaye of the College of Law's Representation Service (representing Mrs Lee) also attended.

3. The Tribunal first inspected Flat 59, noting the strips which had been inserted at the edge of the landing at the bottom of the staircase between the carpet and the replacement glass panel which had not quite fitted the space occupied by the former panel, a similar strip in the living room covering another gap between the carpet and a replacement window and the mastic which had been applied to similar gaps where other replacement work had been carried out, including in the kitchen. Upstairs there was a similar situation in the bathroom/WC where a join had been covered between

two windows. Of these only the problem in the kitchen had been addressed. It was noted that the patio doors in the living room were original, not having been replaced.

4. At Flat 61 the patio door in the living room was so hard to open that the Tribunal was obliged to ask the Lessee to let the members out into the garden to view the rear elevation externally. They also had to ask the Tenant to close the door for them and noted that the front door was similarly very difficult to open or close. At this property they noted a screw lifting on a door plate, two other poorly fitted fillets covering similar gaps to others they had seen, together with further mastic (discoloured by dirt) in the kitchen. Upstairs they noted a buckled window restrainer in one of the bedrooms, some pipework not properly resinstated on the floor and a further window which was difficult to open and close.

5. At Flat 61A the Tribunal noted that there were similar incidences of inept mastic filling, that there were draughts at both the front and rear of the flat due to ill fitting door and windows and that the rubber gasket on the front door frame was loose. In the living room the fillets on the floor were loose, the window locks were stiff and the UPVC replacement for the Lessees' own previously installed patio doors was difficult to open or close. The middle bar on one of the windows was sagging noticeably. Upstairs there was another buckled window restrainer and in one of the bedrooms they noticed a bowed window bar and more draughts.

6. At Flat 65A (an upstairs unit) the Tribunal noted that the front door was of a poorer quality than those at the other 3 flats they had seen which were all on the ground floor. The door was not a security model, without the security bolts as in the ground floor units. They noted that the layout of this flat was also different from that of the ground floor flats, having an open plan living room and kitchen with a door to an adjacent balcony. They noticed that there were screws which had not been effectively sunk into the balcony door frame, and that the window units which had been installed were flimsy and not of solid wood as had apparently been the case prior to the works. They also noted that there was no vent installed in the front elevation. They were unable to inspect the bedrooms as the flat was occupied by the Lessee's tenants but they were able to see further examples of the inept mastic filling which had been employed to fill gaps created by the ill fitting replacement units.

THE HEARING

7. At the hearing, the Applicants (other than Mrs Lee) were represented by Mr Marsh of Counsel, and Mrs Lee by Mr Baron and Mrs Kaye. The Lessees also attended. The Respondent Council was represented by Mr Joseph, who was accompanied by the members of the team which had attended the inspection, plus Mr P Skelly MRICS of the Potter Raper Partnership (the Council's Quantity Surveyor).

8. Prior to commencing the hearing of the evidence on the substantive issues before them the Tribunal was obliged to consider a preliminary issue raised by Mr Marsh on behalf of Ms Golloghly who claimed that she had not received the s 20 Notice in connection with the works, since it appeared that, despite due notification of her purchase of Flat 59, the Respondent Council had continued to correspond with the previous Lessees, a Mr and Mrs Talbot. Cross examined by Mr Joseph on behalf of the Council, Ms Gollogly stated that it was not reasonable for her to open someone else's post and that she had not therefore received the s 20 Notice, or been aware of the proposed major works, until hearing about the proposals from the other Lessees she had notified the Council and had then been sent the Notice at a later stage, but not in time to make any representations. She conceded that when she had received it she had read the letter and noted the proposed costs of £14,924.81 but had concluded that she had no control over either the cost or the project to change the windows. She had not received any other communications about the matter other than the belated letter from the Council. Moreover the Applicants had filed a Statement of Case and individual witness statements in which it had been alleged that the Council had entered into a contract with one of the listed contractors before allowing the consultation with the Lessees to be properly concluded.

THE APPLICANTS' CASE

9. Mr Marsh then called Mrs Griffin (Flat 61A) who said that she had made representations against the Council's proposals both individually and on behalf of the Residents' Association BATRA of which she was Vice-Chairman. She said her flat had had new windows before she purchased it (in 1992) but she thought that this had

been without the Council's consent so she had not been in any position to resist the installation of those proposed pursuant to the Council's project. She had nevertheless expressed her reluctance to have the work done. She had, however, raised the unsatisfactory execution of the work with the Council once it had been done, again both individually and on behalf of the Residents' Association. Apart from the unsatisfactory window replacements and inferior locks on the replacement front doors which provided less security than before, she was concerned about the poor quality of the work in removing the asbestos. The first contractors employed had proved to be too expensive since they had been properly careful and this had been found to be too slow, and their replacement had removed the asbestos in a reckless way, jemmying it out and then kicking the panel out with their feet. Moreover they did not wear masks and broke a panel, releasing the asbestos while she and her daughter were in the room. Cross examined by Mr Joseph, Mrs Griffin said that she did not dispute that in some cases the work needed to be done, but her own particular effort had been concentrated on attempting to get the unsatisfactory work put right, in respect of which she had not had any luck at all having failed to set up a meeting until she had contacted a councillor.

10. Mr Marsh then called Mr Sinclair (Flat 65A) who explained in detail why it was not necessary to replace either the doors or the windows in his flat. Being on the upper storey and under the shelter of the upper walkway his flat did not suffer from adverse weather. No rain ever reached his front door therefore so there was no need to replace it. Moreover his own door had been replaced with an inferior door, and while it was a fire resistant model, the frame was not. He said that a poorer quality of door was supplied for the upper flats than that specified for the ground floor, and explained that his business was property development so that he understood fire regulations. He complained about the inept mastic filling and the inaccurate fitting which had made so much of it necessary and said that the work done was not worth the large sum of nearly £15,000 per flat which the residents had been charged.

11. The next witness called (by Mr Baron, separately representing Mrs Lee) was Mrs Lee herself (the Lessee of Flat 61) who confirmed that she had received the s 20 Notice and had been immediately concerned about the high cost, since in the London Borough of Lambeth Lessees had been charged only £7,000 for

the same scope of works, which she considered should not in any circumstances have cost nearly £15,000. She had immediately responded to the s 20 Notice with a handwritten letter which had been sent within the designated 1 month time limit. To start with she had not made any payment, had contacted the Council (in fact Mr Joseph personally as well as the site manager during the contract).

12. The next witness called was Mr Michael Langford Kemp BSc FRICS of Cardoe Martin Limited , Chartered Building Surveyors, who had been instructed on behalf of the Lessees to report on the necessity, nature and quality of the works. He had initially inspected the property in September 2004 (when he had been unable to progress any report as at that time further information on the scope of the works was required and he had not yet seen the Specification or a Final Account for the works). The report he presented to the Tribunal as his evidence in chief had been prepared following an inspection undertaken on 16 February 2007. He had inspected the property externally and Flats 59, 61, 61A, 63 and 65A. He confirmed that, as he had been aware that his report would be required for the LVT, he had prepared it in accordance with rule 35 of the Civil Procedure Rules and the RICS Practice Statement for Surveyors acting as Expert Witnesses. For the preparation of his report, he had been supplied with 2 sample Leases (Flats 61 and 61A), the letter of 31 January 2003 setting out the estimated cost of the works, the Schedule of proposed works at Flats 57 and 69A, an Extract from the Contract Specification for the works and a copy of the Final Account, together with the Applicants' Statement of Case and the Respondent Council's Response. He had also been given Site Minutes which (although it was not clear when they had been prepared) indicated that the works had been commenced "around" June 2003 and that practical completion had been sometime "in the first half of 2004". He said practical completion had clearly taken place by the time of his first inspection in September 2004 by which time there was no scaffolding or workforce on site.

13. He said that the specified works included external repair of the property, asbestos removal and external door and window replacements. He said much of the work within the specification appeared to be straightforward repair or maintenance although some were apparently improvements or alterations. He understood that there were different Leases applicable to some of the flats in the block which were not

uniform, which would require separate consideration of whether all the works attracted recoverable costs, and he identified these improvements and alterations as follows:

- Asbestos removal
- Replacement flat entrance doors
- Replacement windows
- Fire protective anti graffiti system

14. He said that in general it was not necessary to remove asbestos products while they were in good condition. The contract included replacement of the window units which had contained asbestos panels and he accepted that that would inevitably involve removal of the asbestos panels which would have been an integral part of the window assembly. However he did not see why it was reasonable or necessary to remove the asbestos in the soffits and eaves as at this high level there was unlikely to have been any deterioration as it was wholly inaccessible. He also queried whether it was necessary to remove asbestos from the drying cabinets adjacent to the flats. He said that asbestos removal had accounted for the large sum of £9,584 in the contract.

15. Mr Kemp said that he had been informed by the Lessees that their replaced front doors were generally in good condition and this had been confirmed by the absence in the Respondent Council's Statement of Case of any suggestion that the reason for replacement was disrepair. He said that it appeared that the reason for replacement was to meet higher standards of security and fire resistance, in respect of which he knew of no statutory obligation to meet any revised standard for doors. Moreover there appeared to have been provision for 21 doors whereas there were only 14 flats. The cost for doors, despite the difficulty in breaking down prices accurately, seemed to be about £27,000.

16. With regard to windows, Mr Kemp said that he understood that the former windows had been single glazed wooden framed units, which it was accepted were in poor repair. They had been replaced by double glazed UPVC units which would have been more expensive than simply replacing to the same specification as the original

units. However he accepted that Building Regulations required replacements to meet current Regulations which in practice meant that the new windows had to be double glazed. However it appeared that some Lessees had already had their windows replaced following exercise of their Right to Buy, and these windows had also been replaced with the exception of the patio doors at Flat 59. He said in its Statement of Case the Respondent Council had relied on the fact that these windows had been examined in 2003 and the aluminium frames had been found (i) to have no thermal break (ii) to have glass not marked as laminated or toughened, although the Statement of Case was silent as to whether there was any disrepair. He contended that although a thermal break is an energy efficient design there is no requirement that any particular standard is required for *replacement* windows (as opposed to installation in new build or material alteration projects) prior to 2002 and nor was it normal for glass to be marked as toughened or laminated. He could find no justification for replacement of these windows save Council policy, and had worked out the likely cost as £73,692 or £5,700 per flat.

17. With regard to the Agproshield fire protective anti graffiti system costed at £4,410, Mr Kemp said this seemed to be an improvement. He added that a further item "extra over for caulking costs" could have been in connection with removing old paint finishes, but that a conventional paint system could have been used without incurring this cost of £1,865 plus fees.

18. Mr Kemp said there were numerous items in the Final Account which required clarification, which was for a base sum of £183,594.34 grossed up to £204,276.79. However he said that there were no explanations for the discrepancies in the accounts which were probably due to works not done and/or differing from estimates, although the figure quoted in the final account was also exclusive of preliminaries and scaffolding. He picked out certain items requiring explanation, such as the concrete repairs in the specification of which no sign was visible either on the surrounding paving or on the landings or staircases (the latter of which were tiled). He also found changes to the specification which did not seem to be routine variations, for example he could find nowhere an extra "half round gutter" when 71 linear metres had already been allowed for. He also challenged the work to the heating installations (which he said had not been satisfactorily completed in all cases)

and which at £500 per flat seemed excessive, although he accepted that this might have been in connection with the removal of the radiators from the former window panel units. He also considered that there should be a saving for the fact that the patio doors had not been replaced in Flat 59. He said there was confusion as to the appropriate costs of replacing the barge boards, for additional metalwork for refuse chute doors and for the preliminaries, in respect of which he considered that the Lessees were entitled to satisfy themselves that the appropriate amounts had been charged after all adjustments. He was also confused as to why further work had apparently been instructed after practical completion as this was not normal in the defects period.

19. He said that during his inspection of the 5 flats he had visited he had "seen extensive defects and deficiencies in the window installation which require attention". He went on the "vast majority of these would have been outstanding from the moment the windows were installed" and that he was "at a loss to understand why these were not noted by the installers or the contract administrator when the project was initially snagged". He added the "principal category of deficiencies relates to making good to adjacent surfaces when the windows were installed" and that "in order for the window assembled in total to function satisfactorily it is important that gaps around the edges are properly filled and sealed otherwise there would be draught paths around the perimeter of windows which are intended to be draught proof and provide a high standard of thermal insulation". He also said that making good of adjacent surfaces could leave unsightly details internally around windows where sections of plaster and flooring are repaired and "the usual approach is for the making good to be covered by neatly installed plastic cover strip which can be removed at the occupiers' wish in due course when redecoration or refurbishment takes place". He said that this had not been done properly in every case where he had been able to check and that this was unsatisfactory and in breach of the Specification, the worst example being inside the front door at the foot of the stairs in each case, since scribing trims to existing surfaces had been replaced by simply overlapping them onto adjacent carpet instead of lifting the carpet and doing the job properly. Elsewhere gaps had simply been covered without the gap underneath being sealed. He said that the making good required was "quite extensive" and that the extent of defects found indicated that a thorough inspection of all units was required and justified. He

estimated that 2-3 days per flat was required. He provided a helpful schedule setting out the items identified.

20. Cross examined by Mr Joseph, Mr Kemp said that the defects were significant not cosmetic, as the works were incomplete and particularly spoilt by the poor mastic filling. He agreed that it might be reasonable to replace the asbestos if that was necessary in the course of other work, for example if the windows were in disrepair or if the soffits actually needed to be replaced. Mr Joseph tendered the report of Mr P Skelly MRICS commenting upon the report of Mr Kemp but did not call him to give evidence or tender him for cross examination.

THE RESPONDENT'S CASE

21. On behalf of the Respondent Council, Mr Joseph first called Mrs Alessia Fedeli, who stated that her firm (Mouchel Parkman) had surveyed the building and managed the works on site, and in her opinion the works were required to keep the building in a state of repair. She said she did not know why the patio doors at Flat 59 had not been replaced. She confirmed that the Residents Association had not been involved in the specification as no Residents Association was recognised. She added that even if permissions had been given for residents to install their own windows those residents would still have had to pay their share of the works costs as set out in the Lessees' Handbook. In connection with the apparent failure to serve the s 20 Notice on Ms Gollogly she said that there had been ample publicity including flyers being sent out, so she had had actual notice irrespective of not receiving the initial letter with the other Lessees, and in any event the Council had acted reasonably in sending the letter again as soon as they were aware that she had not been personally notified previously, moreover the Lessee had not made any observations, so had not been prejudiced, the Council's obligation was only to "have regard" to any such comments and in any case the works had not commenced until May . The Tribunal, however, pointed out that by the time of the receipt of the letter it was too late for the Lessee to do anything effective since the Council was already entering into the contract almost immediately, so there would therefore not have been much time for the Council to have regard to her comments even if she had made any, to which Mrs Fedeli made no comment.

22. Mrs Fedeli pointed to her written statement which comprised her evidence in chief in which she had stated that "up to 3 letters" were sent to the Lessees, on 3, 11 February and 1 March "(a chaser letter for those that had not yet responded)". She said that the Leases allowed the Council to do the works which had been effected and to recover the costs from the Lessees.

23. Asked by the Tribunal how she addressed Mr Kemp's views of the works, Mrs Fedeli said that the practice was to cover areas adjacent to the windows with cover strips to avoid complete redecoration. Her team had inspected the building, noted that some defects were present, since when the snagging had been completed and the clerk of the works had done a random check (of about 20%). She added that the Council had received some feedback (only about 30% of the questionnaires sent out to residents had been returned). The contract had completed in March 2004 and the defect period had expired in March 2005. She added that there had been no additional charge to residents for rectifying the defects. With regard to the soffits, she said that they were close to the top of the windows so that it had been necessary to remove the asbestos as there was a risk of fibres escaping. With regard to replacement of the windows which had previously been replaced by the Lessees, she said that there had been planning permission for the whole building so it had been necessary to change them all to avoid compromising the aesthetics of the block. She said that a standard specification required windows complying with the current British Standard.

24. Cross examined by Mr Marsh, Mrs Fedeli said that the decision to retain some patio doors and a single front door and not others was one taken by the project manager on site, and that the decision had been made at the time, she had no idea why. She said that the drying rooms had also had to have the asbestos removed (along with the soffits and window units). She said it had been a policy decision, as there had been no damage. She disputed the extent and significance of the defects claimed by Mr Kemp. With regard to the Residents Association, she said that there was a process for recognising such associations which was set out in the Lessees' handbook and no such procedure had been followed. Asked by the Tribunal if, following the property having been inspected and signed off, she was satisfied with the quality of the works in spite of all the mastic and other criticisms, she insisted that

she was. Asked for further comments, when it was clear that Mr Kemp was not happy with the quality, and that the Tribunal, following its own inspection , was not happy either, Mrs Fedeli was apparently not minded to change her view but agreed that further rectifications could be made where such needs had been identified . Asked by the Tribunal when this might take place, since it appeared that all the defects complained of were detailed in Mr Kemp's report, she said she presumed that this could be done by the end of the summer (although this was qualified by Mr Skelly who considered that it might take longer to get the contractors back on site.

25. Following the hearing of the evidence the Tribunal directed that Final submissions should be sent to the Tribunal by 31 May 2007.

FINAL SUBMISSIONS

26. Written submissions were duly received from Mr Marsh, Mr Baron and Ms Kaye on behalf of the Applicants, and from the Respondent Council.

FINAL SUBMISSIONS ON BEHALF OF THE RESPONDENT

27. The Respondent Council submitted that the Lessees had covenanted by Clause 2(3)(a) to pay the service charge contributions as set out in the Third Schedule, and to contribute a proportion of the cost in doing the same by way of Clause 7(1)of the Third Schedule; under Clause 4(2) of the Lease the Respondent was under an obligation to keep in repair the structure and exterior of the Flat and of the building. He went on that pursuant to Clause 7(9)(i) of the Third Schedule the Applicants (save for Flats 59 and 61A) had covenanted to contribute towards the Council's costs of installing double glazed windows in replacement of any or all of the existing windows and pursuant to clause 7(1) to pay all costs incidental to those works e.g. the professional fees. By Clause 7(7) a 10% management fee is chargeable.

28. The Respondent Council submitted that the costs of the works were reasonable, the specification had been put out to tender and responses received from 6 contractors, and the contract awarded to the lowest in price. It was submitted that the consultation had been in accordance with the requirements of s 20 (under the old

statutory requirements since the service of the Notice had taken place on 31 January 2003). It was said that the time for response was in accordance with the legislation. It was further submitted that the so called Residents Association BATRA was not a recognised association under s 29 of the Act so that additional consultation requirements in respect of s 20(5) were not required and that Ms Golloghly had been aware of the works from at least 10 March 2003 and had in any case not made any observations.

29. With regard to the items of the works specifically challenged the Respondent Council relied on the case of Wandsworth Borough Council v Griffin in which the Lands Tribunal ruled that a repair is still a repair even if there is an element of improvement. It was contended that all the works were reasonably necessary and that the quality of the work was for the most part adequate and complete. It was stated that the Respondent Council's surveyors had written to all the Lessees and had logged the details on a spreadsheet in respect of all complaints which had been made. The surveyors had written again in August 2005 to request further comments and had received no responses. Following the hearing on 18 April the contractors were asked to return to the properties to undertake outstanding works and that all works were finally complete : at Flat 59 the clerk of the works had been satisfied although the Lessee had not had a chance to confirm satisfaction as he does not reside at the flat; at Flat 61 the Lessee had verbally confirmed satisfaction to the clerk of the works; at Flat 61A the clerk of works was satisfied and the Lessee had verbally confirmed satisfaction; at Flat 65A the clerk of works was satisfied and all works complete save for one glazing unit although the Lessee had not had the opportunity to confirm satisfaction due to not being resident at the property. It was submitted that the works had now been completed to a reasonable standard apart from one glazing unit which was on order.

FINAL SUBMISSIONS ON BEHALF OF THE APPLICANTS

30. For Ms Golloghly , Ms Griffin and Mr Sinclair, Mr Marsh submitted that during the consultation period the Lessees had raised a number of issues, either individually or through the Residents Association and on 6 March 2003, 4 working days after the end of the consultation period, the contract was let to a contractor called

Albert Soden. The works then commenced in June 2003 and were completed during the first half of 2004, during which issues continued to be raised by the Lessees and others. It was his submission that the Respondents had failed to comply with the consultation procedure under s 20 of the Landlord and Tenant Act 1985, that the costs were not reasonably incurred nor of a reasonable standard and should be limited pursuant to s 19 of the Act. He referred to the date error in the s 20 letter which had required responses to the consultation by 31st February and accepted that this meant 28th February, the intention having been to give the Lessees a calendar month for response. With regard to the works, Mr Marsh submitted that all three Applicants which he represented had not needed new front doors, that the asbestos removal was not necessary and that the works were not of reasonable quality as had been obvious to the Tribunal on the inspection (despite Mrs Fedeli's assertions to the contrary), but in any case some of them were improvements which according to the terms of their Leases the Lessees of Flats 59 and 61A had not covenanted to pay for. He further submitted that the present case was distinguishable from that cited by the Respondent Council in that in that case repairs were required whereas in the present case they were not. Mr Marsh continued that the Tribunal had made clear that it was expected that the defects would be remedied and that some work had been undertaken but it was not the fact that it was now complete. However he submitted that as the original works had been so unsatisfactory the service charges should be reduced as the Applicants had had to live with the defects for 3 years. Finally he submitted that a s 20C order should be made, and that the Tribunal should find that the s 20 consultation had not been compliant and that therefore the service charges are limited.

31. On behalf of Mrs Lee, Mr Baron and Ms Kaye, endorsing Mr Marsh's submissions in other respects, also submitted that the Mouchel Parkman survey prior to the works stated that the front doors were "in fair order with no broken glazing, defective seal units or obvious signs of damages to the doors or their frames" and recommended that they either be "left alone" or "be overhauled" and that Mr Kemp, the applicants' surveyor, had found no evidence of disrepair. They submitted that it was clear that the works had been "shockingly poor and fell far below any acceptable standards of workmanship". They submitted that the replacement of Mrs Lee's doors and windows was wholly unreasonable.

DECISION

32. With regard to the three principal categories of works challenged as unnecessary the Tribunal determines as follows:

Asbestos. It is the view of the Tribunal that it was necessary to remove the asbestos in the window unit panels as this would inevitably be damaged when replacing the windows. In the circumstances it was also reasonable to remove the asbestos adjacent to the high level windows and whilst doing this it was probably reasonable to remove the asbestos from the soffits. Asbestos in the drying cupboards was clearly accessible and could have been susceptible to damage which would release the dangerous fibres and it is therefore the view of the Tribunal that in respect of the removal of all the asbestos the Respondent Council should be given the benefit of any doubt in the matter.

Doors. It is clear that the Council Surveyor recommended the renewal of the doors in his report, although the earlier Mouchel Parkman survey recorded that the doors were in "fair order" and made a different recommendation. It therefore seems that there was no need to replace the doors and it appears that there was in any case no logic to their replacement since the patio doors were left untouched at flat 59. The Tribunal determines that the cost of replacement of the doors should not be allowed.

Windows. The windows are in a different category since there is force in the argument that for aesthetic reasons the windows of the whole block should have a uniform appearance. Moreover some of them were in disrepair and the Lessees had had no permission to make the earlier replacements which they had effected. The tribunal determines that the replacement of the windows was not inappropriate.

33. **Service of the s20 Notices.** It appears to the Tribunal that service on Ms Griffin, Mrs Lee and Mr Sinclair was compliant with the legislation but that service of the Notice on Ms Golloghly was not, especially since she was prejudiced in being too late to make any representations to the Respondent Council. In her case the sum recoverable for the works is limited to £250 as there was no proper consultation.

34. **Quality of the works.** With regard to the works which are still not properly done, and which were originally signed off without adequate checking, and yet appear still to have outstanding faults, the Tribunal is of the view that these defects should have been noted and properly logged by the clerk of the works at the earliest stage and then been put right without delay. The Lessees were entitled to this when being asked for almost £15,000 for these works. In view of the poor workmanship and the long delay in rectifying (in so far as such work can be adequately rectified) the Tribunal determines that the service charges levied shall be reduced by 50% and that the adjusted figures shall in each case be paid by the Lessees only when the defects identified in Mr Kemp's report are remedied to the satisfaction of each of the Lessees. The Tribunal would expect this to be completed by 30 September 2007.

35. The Tribunal would not expect the Respondent Council to apply any costs of the hearing before the Tribunal to the service charge since no external legal or professional services were utilised at the hearing. However in view of the obvious problems with these works which the Council could quite well have remedied without the Lessees having been put to the trouble of applying to the LVT, the Tribunal would certainly make such an order if the Council show any intention of making such a charge, in which case the Lessees should draw the matter to the Tribunal's attention when a formal s 20C order may be added to this Decision.

Chairman..... P. R Evans

Date..... 3. 7. 07