

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LSC/2008/0043

Application under Section 27A of the Landlord and Tenant Act 1985

**Re: 24 Surrey Road, Bournemouth**

Applicant	A E L Properties (Southern) Limited	
Respondent	Mr J L Wood – Flat A Mr S McCornish – Flat B Mr A Carroll – Flat C Mr & Mrs A A Moir – Flat D	
Date of Application	28 <sup>th</sup> April 2008	
Date of Inspection	14 <sup>th</sup> July 2008	
Date of Hearing	none	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves	Lawyer Chairman
	K Lyons FRICS	Valuer Member
Date of Tribunal's Decision:	5 <sup>th</sup> September 2008	

**Decision**

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the year 2007/08
  - a. it would not be reasonable to incur the sum of £17,687.94 service charge (“the service charge”) in respect of proposed boundary wall works at 24 Surrey Road, Bournemouth (the premises) and is not payable
  - b. the Tribunal is unable to determine what sum it would be reasonable to incur.

## Reasons

### Introduction

2. The application made by the Applicant under Section 27A of the Landlord and Tenant Act 1985 (the Act) is to determine, in respect of the premises for 2007/08, whether service charges of £17,687.94 in respect of boundary wall and related works are reasonable and payable

### Inspection

3. On 14<sup>th</sup> July 2008 the Tribunal inspected the premises. None of the parties was present.
4. The premises occupy a corner site fronting on to Surrey Road with a return frontage on to Queens Road in a residential area. It is a converted block of 4 flats with external areas for vehicular access and parking, with bordering grassed areas with a number of trees. The brick boundary wall fronting the highway on to Surrey Road and Queens Road, which serves partly as a retaining wall for the premises, has partially collapsed and is otherwise affected by root systems and is in need of repair. The frontages are presently fenced for safety of users of the highways.

### Hearing

5. None of the parties requested a hearing, so the Tribunal considered the issues on the basis of the documents submitted by the parties, including additional papers provided after request by the Tribunal.

### Consideration

#### History.

6. In June 2006 Collins Associates (Collins), Building Surveyors, Construction Cost Consultants, Building Surveyors and Project Management prepared a ten year plan for planned maintenance of the premises. It included "the brick boundary wall is in need of urgent repair as the wall has structurally moved and sections of the wall have collapsed. There are other sections of the wall that are also in danger of collapse." They recommended a Structural Engineer be appointed to provide a report and recommendations, referring also to tree roots growing into the soft landscaping and the resulting pressure causing damage to the wall. They gave a budget figure for "repairs and renewal to sections of brick boundary wall" of £3,500 stating that it required immediate attention.
7. On an uncertain date, but prior to October 2006, Collins prepared a specification for replacement of the boundary wall and associated works. (Relevant detail of that specification is set out below). On the basis of that specification Collins went out to tender and the Managing Agents proceeded with the required consultation procedures of the Act. It seems that no request was made by any Respondent to obtain an estimate from any specified contractor.
8. Two tenders were received, the lower of which was RMH Construction Ltd for a total of £17,012.31 which together with supervision and managing agents' additional service charge totals £17,687.94 – the amount the Applicant seeks to have approved by the Tribunal. Those tenders were considered by Collins who recommended acceptance of the RMH tender to the then managing agents with confirmation that all tenders were fully compliant with the terms and condition of the tender documentation.

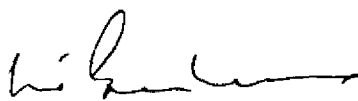
9. The Tribunal has seen copies of the tender forms received by Collins. They appear to be in a form prepared by Collins. They contain no breakdown of the tenders between any particular aspects of the work, but simply an overall works sum, a contingency sum and VAT.
10. Those copies were apparently supplied (at the Tribunal's request) by Collins by email to the present managing agents on 14<sup>th</sup> August 2008. The email to which RMH's tender was attached makes the following points:
  - a. RMH are unable to stand by their tender because of subsequent cost increases;
  - b. The replanting of trees was not a condition of the original tender as this was an unknown requirement of the Council at the tender time
  - c. They have indicated a cost of approximately £10,000 to complete the works upon confirmation of a Structural Engineer's design and approval of the Council.
11. By letter dated 30<sup>th</sup> April 2007, the Applicant had received first an informal notice from the Bournemouth Borough Council (the Council) concerning the dangerous condition of the wall requesting the wall to be made good within 5 weeks, referring also to the existence of a Tree Preservation Order. By letter dated 14<sup>th</sup> May 2007 the council gave the Applicant notice, for safety reasons, to remove the trees on the site within 5 weeks of 14<sup>th</sup> May 2007 and they would discuss further the removal of the dangerous wall.
12. On 14<sup>th</sup> June 2007 planning consent was granted for felling of 11 trees and for replacement with 5 trees within 8 months of implementation of the planning consent.
13. On 26<sup>th</sup> November 2007 a quotation was obtained, it is believed by one of the Respondents, from Claymoor Construction Ltd for building a boundary wall (but no mention of tree work) for £4,298 plus VAT.
14. There have since been difficulties in the managing agents obtaining payment from all leaseholders in advance and it is understood this application arises as a result.

#### Issues

15. The Tribunal considers there are the following issues in this case: first, the specification for required work; secondly, what is a reasonable sum. Resulting from these the Tribunal considers further consideration should be given to the way forward.
  - a. Specification. The specification referred to above contains a Schedule of Works which includes "allow for the provision of a Structural Engineer to provide the necessary structural calculations for the construction of the boundary wall to the satisfaction of the Local Authority". It is plain from this not only that a full specification itself had yet to be determined (and the Tribunal received confirmation that no engineer's drawings/design/ specification were sent out when seeking tenders), but that consequently it would be very difficult, if not impossible, for any contractor to provide any accurate tender. It seems likely to the Tribunal that such uncertainty might well void any contract resulting from a tender and also that it is likely that the tenders actually received could well be pitched very much on the high side to provide for the uncertainties. It appears to the Tribunal that Collins have not sought tenders on any certain specification and it is difficult to see how they could make any recommendation about them. Further that, as noted at 10b above, the tender does not include replanting, so there may be an issue about the validity of the consultation procedure.

- b. A reasonable sum. The Tribunal notes that Collins, in 2006, budgeted for only £3,500 for the remedial work. They appear to be suitably qualified to provide a realistic estimate for budget purposes. However, on receipt of tenders, there is no evidence that they queried the figures received in the light of their own budget figure. Nor is there any evidence that Collins reviewed figures in the light of the admittedly simplistic estimate from Claymoor. Taking into consideration the figure budgeted for by Collins and the quotation from Claymoor and also using its own knowledge and experience, the Tribunal considered the figures used in the consultation procedure are excessive even allowing for the possibility that the wall might need to be built with a structural element.
- c. For the above reasons the Tribunal was unable to determine the application for approval of the sum specified nor what sum might be reasonable. It considered that such a service charge would not qualify (for the purposes of Section 18 of the Act) as relevant costs recoverable as service charge as it would not have been reasonably incurred.
- d. An alternative way forward. The Tribunal feels that in view of the tender amounts, it would have been reasonable to expect Collins and the managing agents to consider also whether there were any alternative cheaper options. The basic existing proposal seems to expect a wall of sufficient strength to, once again, provide a structural retaining wall. The Tribunal has enquired of the Applicant whether any such consideration has been given and the answer was that it had not. The Tribunal has in mind, as one option, the possibility of re-grading the soil so as to substantially avoid a new wall needing to have a structural retaining capacity. The Tribunal accepts that this would need discussion with the Council to satisfy its requirements regarding the trees. Until that step is taken, however, the Tribunal takes the view that even if the tender price received turned out to be reasonable for work actually required, it would not be reasonable to incur it until proper consideration is given to alternatives.

16. The Tribunal made its decisions accordingly.



Chairman  
A member of the Southern  
Leasehold Valuation Tribunal  
appointed by the Lord Chancellor