

Brian Gale & Associates

Head Office:
Marcus House
8, West Street
Reigate, Surrey RH2 9BS
Telephone: (01737) 245947
Fax: (01737) 223784

INDEPENDENT CHARTERED SURVEYORS
Since 1985



Our Ref: BWG/sd/108

16th December 2002

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Leasehold Valuation Tribunal
London Rent Assessment Panel
10 Alfred Place
London
WC1E 7LR

BY FAX AND BY POST

For the attention of Mr D Stewart Esq ~ Clerk to the Tribunal

Dear Sirs

RE: Your Ref: LVT/FC/007/120/02
JEFFERSON HOUSE, 11 BASIL STREET, LONDON SW3
LANDLORD AND TENANT ACT 1985 ~ Section 19(2B)

Further to the Directions issued by the Chairman, Mr J C Sharma JP FRICS, and dated 29th October 2002 with respect to the above, I have pleasure in enclosing our Expert Report in response to item (2) of the Directions and confirm that a further signed original has been sent directly to the Representatives of the Lessees.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Brian Gale', with a large, sweeping flourish underneath.

Brian Gale B.Sc. M.R.I.C.S.
For and on Behalf of Brian Gale & Associates
Chartered Surveyors

LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

AN APPLICATION MADE UNDER SECTION 19 (2B) OF THE LANDLORD AND TENANT ACT 1985 AND THE HOUSING ACT 1996

REFERENCE: *LVT/SC/007/120/02*

ADDRESS: *JEFFERSON HOUSE*
11 BASIL STREET
LONDON SW3

APPLICANTS: *STEEL SERVICES LIMITED*

RESPONDENTS: *JOINT (THE LESSEES)*

PROOF OF EVIDENCE
OF LANDLORD'S EXPERT WITNESS (SURVEYOR)
BRIAN GALE B.Sc. M.R.I.C.S.

1.0 Details of the Expert

1.01 The individual

My name is Brian W. Gale and my qualifications are B.Sc.
(Quantity Surveying)

Member of the Royal Institution of Chartered Surveyors (MRICS)

Qualified 1978

Practising as a Chartered Surveyor 24 years

Age 49 years

Married with two young children

1.02 Company Profile

Brian Gale & Associates- Independent Chartered Building and General
Practice Surveyors

Offices Reigate and London

Company founded 1986 (16 years)

1.03 Areas of expertise

All aspects of Building Surveying (Schedules of Condition, Dilapidations, Structural or Full Building Surveys, Specifications, Contract Administration-JCT Contracts).

General Practice Surveying (Lease Extensions, Landlord & Tenant work, Residential and Commercial Property valuations)

2.0 Client's Instructions and The Inspections

2.01 Initial Instructions

Enquiry received from Martin Russell Jones (Managing Agents) in November 2001 for a fee quotation to carry out a detailed inspection of Jefferson House and provide a detailed Schedule of Condition depicting dilapidations and wants of repair together with a Photographic Schedule.

Request for Brian Gale & Associates to approach professional Mechanical and Electrical Consultants to obtain a fee quotation for an inspection and detailed report on the condition of services to the building, was received at the same time.

2.02 Fee quotations

Brian Gale & Associates fee quotation provided on 20th December 2001 clarified on 24th January 2002 and formal acceptance and instructions to proceed received on 28th January 2002.

Fee quotation provided by Michael Jones and Associates Engineering Consultants on 12th December 2001 and accepted on 28th January 2002 for M&E inspection and report.

2.03 Inspections

Michael Jones and Associates undertook their inspections of the Service Installations at the property and services in late January early February 2002 and Messrs J. Bashford and Associates (Specialist Lift Engineers) undertook their inspection of the lift services in late January 2002, their report is included within the Michael Jones and Associates detailed report issued under cover of their letter on 11th February 2002.

The Building inspection by Brian Gale & Associates was carried out by Brian Gale B.Sc. M.R.I.C.S., Patrick Moyle B.Sc. M.R.I.C.S. and Paul Dyer Dip. Surv. M.R.I.C.S. (Chartered Building Surveyors).

This detailed Schedule of Condition and Photographic Schedule was issued in final format by Brian Gale & Associates (BGA) to Martin Russell Jones (MRJ) on 20th February 2002.

Earlier e-mail copies had been sent to MRJ by BGA as early as 27th January 2002 in order that MRJ and their Landlord Clients could appreciate the extent and serious nature of the dilapidations and disrepair noted.

Works only
started in
Sept!

2.04 Client's Further Instructions

Further fee quotation produced to MRJ by BGA dated 28th January 2002 for the provision of a Specification and Schedule of Works, preambles and preliminaries and to go out to Tender to five suitable reputable Contractors to undertake the works as detailed earlier within the Schedule of Condition and M&E Specialist's Reports.

Instructions received from MRJ by BGA on 29.01.02 to proceed in accordance with the fee quotation given above

2.05 Tender Procedure

Full Tender documents sent out on 15th March 2002 to:

1. C.L.C. Contractors Ltd.
2. Oakman Harris Ltd.
3. Mansell Ltd.
4. Kilby and Gayford Ltd.
5. Martin Hall Construction Ltd.
6. Gleeson Group PLC.

Tenders received 26th April 2002 and tender comparison report given by BGA to MRJ on 30th April 2002. Four out of six tenderers returned the tender. Messrs. Kilby & Gayford were the lowest tenderer.

Further meeting with BGA/MRJ and Kilby & Gayford on 24th May 2002 in order to go through tender breakdown in great detail and eliminate various p.c. or provisional sums which do not form part of the comparative tenders submitted, substituting from prices where possible.

Final revised and fully comparable tender received from Kibly and Gayford Ltd dated 2nd July 2002 in the sum of £564,467.00 plus VAT and subject to a 1% per month increase if project commencement delayed.
Revised tender and details reported by BGA to MRJ on 4th July 2002.

3.0 Expert Surveyors Statement

(A) See the 17 June 2003 LVT determination
And Mr T. Breck, LSM Partners Report,
Feb 2003

3.01 I, Brian Gale, herewith confirm that the Schedule of Condition prepared by Brian Gale & Associates, and which relates to Jefferson House and is dated 20th February 2002 is in my professional opinion an accurate account of the condition of the building as at the date of the inspection and does not overstate or exaggerate the requirements for the immediate repair and maintenance required on this building. I also truly believe, but am not technically qualified to confirm unequivocally, that the renewals and improvements and reinstatement works required to the Services Installations at Jefferson House as reported by Michael Jones and Associates in February 2002, is a true and accurate reflection based upon their inspections and the inspection of J. Bashford Associates on 22nd January and 5th February 2002.

LIE!
See 17 June 03
LVT Report

3.02 I confirm that the Specification and Tender Documentation prepared by BGA and sent out to six Contractors on 15th March 2002 represented an accurate reflection of the dilapidations and disrepair noted in the earlier survey and Schedule of Condition prepared (and described in 3.01 above) and did not contain any known enhancement or improvement works and was intended to be a document from which a number of reasonable sized "Main Contractors" could tender on a competitive basis.

3.03 I confirm that the works properly and reasonable required were tendered on an "Arms-length" basis under the Code of Practice for Selective Tendering issued by the JCT and R.I.B.A. I further confirm that BGA had no conflict of interest with any contractor selected to tender.

3.04 I confirm that there were no inclusions within the Specification or Tender Documentation intended to improve or enhance any future potential development of the site by either the Freeholder or Head Lessee.

3.05 I confirm that, in my opinion, the extent of the works required is reasonable taking into account the condition of the building and that the cost of works as detailed in the revised and final tender document provided by Kilby & Gayford on 8th July 2002 and totalling £564,467.00 represents a reasonable assessment of the cost of carrying put all necessary works. Kilby & Gayford are known to me in my professional capacity as a highly respected and competent Building Contractors, quite capable of repairing and refurbishing a prime London residential block to a good standard.

See
LVT
Report
Impact =
Less £500,000 !!

4.00 Lessees/ Respondent's Objectives and Points of Dispute

4.01 L.V.T. Chairman's Directions

Under item (1) the directions issued by Mr J.P. Sharman J.P. FRICS L.V.T. Chairman on 29th October 2002 the Respondents were amongst other matters required to:

"List each item of the proposed work that is in dispute, stating fully the reasons for each disputed item. The reply should include all relevant

information and supporting documentary evidence, which are to be considered by the Tribunal".

Under item (2) of these directions the Applicants are to "send a response identifying those issues now agreed and those still in dispute" together with a "Proof of Evidence of any Expert Witness".

NK-Dit-Rawé:

ie the total sum

In the preamble, The L.V.T.'s directions confirm that the purpose of the L.V.T. in this application is solely to "determine the reasonableness of the refurbishment and repairs work proposed by the applicants at a cost of £736,206.09".

Accordingly as the Applicant's appointed Expert Witness in this matter I have limited my specific response to the Respondent's specific points of dispute relating to the "reasonableness of extent and cost of works proposed".

4.01 Respondents Points of Dispute

I have been provided with copies of various representations made by the Lessees either individually or as a group via a representative, to the L.V.T. and which is, I presume, their presentation to the L.V.T. under item (1) of the directions dated 29.10.02

These, and my responses are as follows:

1. Letter from ~~Redacted~~ dated 25.11.02
ref: PMG/JAA/106096.001 to Mr D Stewart Clerk to the L.V.T.

Question: "When would it be reasonable to demand payment of the costs of refurbishment and repair?"

Breach of my lease

Answer:

Prior to entering into a JCT Form of Contract with the Main Contractor it is imperative that all monies required to complete the works, inclusive of any VAT, Professional Fees and Management Costs, are deposited in the Managing Agents Client Account as any inability to meet an interim payment properly certified under the JCT Contract by the Contract Administrator could result in the Main Contractor determining the Contract and which could have enormous cost implications to both the Landlord and therefore the Lessees, as this would constitute a breach of contract.

NK-Dit-Rawé
Proved during LVT proceedings
unappropriate

2. Letter from Mr ~~Redacted~~ of ~~Redacted~~ and Co. dated 21st November 2002
ref: 2093.3. to Mr D Stewart, Clerk to L.V.T.

"It is contended that the Schedule of Works as proposed on investigation would appear to be excessive and unwarranted".

NOTE: No other part of the letter refers to the reasonableness of the extent or cost of works and is therefore not addressed.

Answer: The above statement by Mr. [REDACTED] is non-specific, there are no items of work specifically disputed neither as unreasonable nor excessive in cost. I would therefore only answer in general terms by referring the Tribunal to the procedure adopted by Brian Gale & Associates in preparing a Schedule of Condition and obtaining quotations for the works via a Competitive Tendering Procedure with a detailed Specification and Schedule of Works, all as set out in sections 2.01 to 2.05 inclusive of this Expert Report.

3. Letter from Ms. NK Dit-Rawe dated 25th November 2002 addressed to Mr D Stewart, Clerk to the L.V.T.

This is a lengthy letter with many points raised, none of which, in my opinion, are specifically regarding dispute of any particular work items or costings. This letter is a general comment on these matters, however in an attempt to answer where possible, and referring to Ms. Rawe's own numbering we respond as follows:

1.1 Copies of the Schedule Of Condition, the Specification and Tender Documents and final detailed costing by Kilby & Gayford have been provided in triplicate to MRJ and additional copies provided (at a charge) to individual Lessees when requested. I understand that 1 set of these documents were left with the Porter for ease of reference and access to all Lessees

1.2 .Kilby and Gayford's tender is based entirely upon the detailed Specification and Schedule of Works and Tender Documents and which is in turn entirely based upon the initial Schedule of Condition and detailed Building Survey and which took 3 Chartered Surveyors and 3 M & E Consultants some 15 man days to undertake (on site).

1.2.1 The first document referred to here is the Schedule of Condition and Photographic Schedule, the second is the Specification and Tender. The first document was made available from May 2002 and the second from the end of July 2002 as soon as the Section 19 Notice was served on the Lessees.

1.2.2 The most competitive bidder, on a direct comparison basis, was Kilby & Gayford. The amendment to the summary page to CLC Contractors' Tender was made by CLC before submitting the tender. The item referred to is a collection of the section 16.00-16.26 Services, and reference to the subtotals on each page relating to this section can clearly be seen to add up to £406,537 and not £160,307, this was therefore simply an

NK-DIT-RAWE:
Absolutely NOT
TRUE!

- See Point 14 of 17 Jun 03
LVT Report

+ Point 2.04 of
B Gale 24 Feb 03
Report to LVT

addition amendment/ correction by the bidder, prior to submission of Tender. I am able to personally verify this.

- 1.3.3.2 The Kilby & Gayford tender sum still includes a number of p.c. and provisional sums, which with regard to the information to hand ought to be sufficient. Sometimes when these amounts are expended in a building contract they result in an extra over cost. The specification would only be revised or modified if, during opening up parts of the building which are currently covered, unforeseen defects are encountered i.e. flats roofs etc.

N.R. DUB. RAWE

When works 1.4
started in Sep 04,
started the construction
of a penthouse flat
(See photos at
end of this document)

I am able to categorically state that the Specification makes NO provisions for any construction of an additional floor nor any future requirement in the building to create a penthouse flat.

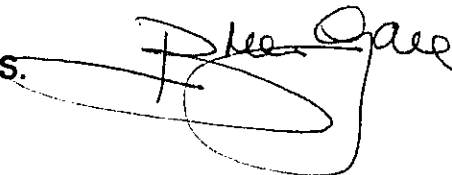
As far as I am aware these details have been openly available to all Lessees since July 2002 (see 1.2.1 above). We have also provided additional copies to individual Lessees as and when requested.

5.0 EXPERT WITNESS STATEMENT

I confirm that in preparing this Expert Witness Report that I have followed the Guidance Notes published by the RICS "Chartered Surveyors Acting As Experts" and that the information and opinions given herein are my professional opinions and that I am not aware of any matters which render me professionally conflicted to provide this report to the Leasehold Valuation Tribunal. I further confirm that my obligation is to report factually to the Tribunal and that if any additional or further matters or information come to my attention which relate to this specific matter of "reasonableness of extent and cost" of the proposed works I am under a duty to report these facts to the Tribunal irrespective as to the effect on either party.

Brian Gale B.Sc. M.R.I.C.S.

13th December 2002



Contained report from
Brian Gale - Not posted!
Arrived after 18 Dec.

Ms N K-Dit-Rawé
3 Jefferson House
11 Basil Street
London
SW3 1AX



Spot the difference on the roof of Jefferson House, 11 Basil St, London SW3 1AX

July 2002



September 2005



What did Ms Hathaway, Martin Russell Jones, Mr Brian Gale (Mr Ladsky's surveyor) and Mr Ladsky said about it?

Ms Hathaway:

- Her letter to me of **26 March 2002**: "*Your suggestion that the appointment of professional advisors is in any way connected with any planning application is incorrect*" (see attached)
- Her **30 August 2002** letter to me: "*We are informed that there is no intention to build the penthouse at the current time*"
- Under point 19 of her **4 March 2003** letter to Brian Gale: "*...regarding the **proposed penthouse**...although the planning permission was granted it was **subsequently found that the scheme was not a viable proposition**...there are no plans to build the penthouse at the property*"

Mr Brian Gale:

- In his Expert Witness report, dated **13 December 2002** Mr Brian Gale, wrote under Section 4 -1.4 - "*I am able to categorically state that the Specification makes NO provisions for any construction of an additional floor nor any future requirement in the building to create a penthouse flat*" (see attached)

Mr Andrew David Ladsky:

- In his letter to me (and other residents) dated **25 January 2001**: "*...the costs of any additional floor on the property will NOT be borne by the residents... All tenants are of course protected by the Landlord and Tenant Acts to ensure those carrying out any works do so reasonably...*" (see attached – and compare that with the 17 June 2003 LVT determination)

And how did the contractors, Mansell Construction, and Mr Brian Gale describe what they were doing to the roof?

From the "description of the works" (September 2004), headed with: Principal Contract: Mansells Construction

"General repair and refurbishment of the main structure of Jefferson House, 11 Basil St, to include cutting out of spalled and defective brickwork and replacing to match, **replacing asphalt roofs**, redecoration externally, redecoration of internal common areas, replacement of lift"

A funny way of "replacing asphalt roof"! Maybe it was a question of economy with words as they headed this "Brief description of work" (see attached).