



Ref No. LVT/SC/007/120/02

FOR TRIBUNAL HEARING : 13 March 2003

BETWEEN

CLAIMANT

Steel Services Limited (Freeholder of the Premises)

and

RESPONDENT

Ms N K-Dit Rawé (No. 3 Jefferson House – 11 Basil Street, London SW3 1AX)

EXPERT REPORT

PREPARED BY

Mr T Brock B.Sc. (Hons) MRICS acting as

Expert witness for the respondent

regarding

Proposed Works to Jefferson House, 11 Basil Street, London SW3

PREPARED AT THE REQUEST OF: The Leasehold Valuation Tribunal – London Rent
Assessment Panel under instruction dated 6 February 2003



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1. SUMMARY OF CONCLUSIONS

This report raises a number of queries in respect of the reasonableness and level of costs associated with the proposed refurbishment of external and internal parts of the building and the repair of existing services.

Based on the findings and comments raised in this report, it is recommended that an agreement be reached between the claimant's surveyors, Brian Gale of Brain Gale Associates, and the respondent's surveyor, Timothy Brock of LSM Partners, on the scope of the required works. Based on this agreed schedule of works, it is proposed that the works are re-tendered in accordance with Standard Code of Practice for Selective Tendering.

The main document discussed and referred to in this report is the specification and tender for works to Jefferson House, Basil Street, London SW3. In its current format, I do not believe that the cost of the works can be guaranteed due to the level of provisional sums which total £210,000.00 when in many cases these can be quantified. This will leave the respondent and other residents in the flat liable to an unknown level of expense. Further works are either considered improvements or being proposed as a direct result of unsuitable alterations to the common parts.

It is my honest opinion that the specification is not sufficient for these works to proceed without a number of areas of doubt as to the correct expenditure of the claimant's service charge contribution and overall control of the project. Further development of the proposed works should be undertaken prior to commencement of the works.

2. INSTRUCTIONS

I received instructions from Ms K-Dit Rawé on 29 January 2003 to provide her with professional building consultancy advice and act on her behalf in the matter of an on-going dispute concerning the payment of a service charge contribution for proposed works to the premises where she resides known as Jefferson House, Basil Street, Kensington SW3.

I attended a Tribunal to discuss this matter on 5 February 2003. At this tribunal I advised that I had only been in receipt of limited information for a short period of time, which meant there was insufficient time for me to prepare a suitable response on behalf of the respondent. Following the decision by the Leasehold Valuation Tribunal for an adjournment and their correspondence dated 6 February 2003 this Expert Report has been prepared. The applicant's Expert Witness, Mr Gale, has supplied information in accordance with the Tribunal's wishes on 6 and 12 February 2003 respectively.

This document aims to identify the matters in dispute and contains my honest opinion of the reasonableness of the works being proposed and the costs associated with these proposed works where these can be determined.



3. ISSUES

The purpose of this report is to determine whether the landlord's proposed works to the premises known as Jefferson House is just and reasonable based on its current condition.

Further comments in respect of the contents of the specification, where relevant, are included to assist in the issue of reasonableness.

4. BRIEF CURRICULUM VITAE - QUALIFICATIONS

My name is Timothy Brock. I am a Senior Building Surveyor of LSM Partners, Chartered Surveyors, Property Consultants, Valuers and Surveyors, practising at 25 James Street, London W1.

I am a Member of the Royal Institution of Chartered Surveyors and obtained a First Class Bachelor of Science Honours degree in Building Surveying at Reading University. I have been in my current employment since 1998 and have four years' post qualification experience as a Chartered Building Surveyor.

I am responsible for all Building Consultancy matters and other related work within the professional department of LSM Partners. LSM Partners deal extensively in all property matters acting for both landlords and tenants.

Prior to working for LSM Partners, I was with Weatherall Green and Smith at their head office in London within the Building Consultancy team.



At LSM Partners I have been involved in the procurement and management of similar sized building contracts ranging from £10,000.00 to over £1,000,000.00, which has included working with both the Bedford and Grosvenor Estates. My other duties include defect analysis reporting, full building surveys, planned maintenance works, dilapidations and project monitoring. I have also acted as a landlord's representative and agent in the preparation of specifications of works and serving of Section 20 Notices to tenants.

I have obtained the assistance of a qualified quantity surveyor Mr G Tyler of Vincent & Partners, to advise on some of the costing information relevant in compiling this report.

I have been living in Central London for the past 6 years where most of my working experience has been gained, although my job takes me to many projects across the country.



5. DOCUMENTS RELIED UPON IN COMPILING REPORT

- Schedule of condition prepared by Brian Gale Associates dated January/February 2002 with associated photographs.
- Expert Witness statement prepared and submitted by Brian Gale to the Tribunal dated 16 December 2002.
- Tender returns (part priced) from Killby & Gayford. 1 No. copy dated April 2002. 1 No. copy dated 2 July 2002. Tender return form (no breakdown) from Gleasons dated 26 April 2002.
- Killby & Gayford letter with breakdown of increases in tender price dated 18 June 2002 and further letter dated 27 June 2002 with further increases.
- Killby & Gayford letter dated 11 February 2003 with sub-contractors breakdown and justification of submitted tender.
- Letters addressed to T Brock at LSM Partners from Brian Gale Associates dated 6 and 12th February 2003.
- Statement of opening tenders from Brian Gale Associates dated 6 February 2003.
- Tender analysis letter/report from Brian Gale dated 30 April 2002 to Martin Russell Jones with attached summaries.
- Correspondence from Martin Russell Jones dated 10 February 2003 giving brief details of works undertaken under service charge between 1997-2003.
- Services engineers report by Martin Jones Associates dated February 2002 including lift report.



6. COMMENTS IN RESPECT OF THE SPECIFICATION AND SCHEDULE OF WORKS TECHNICAL BACKGROUND

The following comments and observations have been made in respect of the specification and correspondence relating to the works. I believe that the matters referred to below are fundamental when considering the cost and reasonableness of the proposed works by the landlord.

1. The specification indicates that the contract is to be let under the Joint Contracts Tribunal (JCT) Agreement for Minor Building Works (MW) 1988 Edition. The JCT 88 contract has been superseded by the JCT (MW) 98 which has subsequently been amended.
2. Under the RICS guidance notes for the selection of building contracts a project of this complexity, quantity and cost the JCT MW 1998 contract is considered (in most normal circumstances) to be unsuitable. The JCT 98 contract for Minor Works should only be used for projects up to £90,000.00 and where works are of a simple nature. With specialist works to the lift required and with extensive electrical and mechanical works envisaged then a more suitable contract should be chosen. Based on the high level of contractor design where warranties for such works should be provided and the need for a performance based specification of works the JCT Minor Works is inappropriate. Furthermore this contract does not allow for the selection of specialist nominated sub-contractors, particularly suited for works to the lift.
3. Within the priced tender returned the contractor has qualified a number of work items, which total approximately £107,000.00. This in addition to the listed provisional sums and contingency figures within the document, which total a further £110,000.00. This represents 75% of the total cost of



the actual fixed priced works (excluding preliminaries). Refer to Appendix 2. for further information. Not only does this represent a lack of clarity with the specification but leaves the contractor to form his own opinion of the likely cost of the works, leaving the final cost to be decided at a later date under a non-competitive situation.

Typical cost variation between tenders (providing the contractors are competent) should not exceed 30% if they understand the nature of the works and have sufficient time to price the document. All contractors had six weeks to price these works suggesting this was not unreasonable. Martin Hall Construction Ltd's submission, albeit verbal, was over 100% greater than Killby & Gayford's original tender submission. This discrepancy is further exacerbated when one bears in mind the high level of "fixed" contingency and provisional sum figures - similar for all contractors.

4. The term "replace where necessary" has been used extensively in the document and is virtually unpriceable as the term is arbitrary. Where there is a degree of uncertainty then typically provisional quantities are inserted and the quantities adjusted in the final account. This gives far better cost control, also making it less prone to abuse by the contractors.
5. Item 11.02 titled "External render all bays" refers to cleaning brickwork and repairs to brickwork for a provisional sum of £1,000.00. It appears that this is a duplication of some of the work elements included under items 7.01-0.7, 8.01,9.01 and 10.1.
6. Item 12.01 refers to the refurbishing of windows which has a lump sum price of £17,634.30 inserted. Later in the same item a provisional sum of £10,000.00 is allowed for repairs. The first should be broken down to show there is no duplication within the figure for this provisional sum and



both figures seem excessive. In a number of cases, rotten sills and the like could be cut out and replaced without the need to completely replace entire window casements. In a number of areas, failed decoration is being taken to assume rotten timber but this cannot be determined until inspected from a scaffold.

7. Item 14.06 includes a provisional sum that could easily be defined. The figure of £10,000 for the level of works involved is excessive.
8. Item 14.17 includes a provisional sum which could be costed.
9. Item 14.23 & 14.24 should have provisional quantities included as a control on cost.
10. I have been involved in a number of external refurbishment contracts for the Grosvenor Estate and had professional dealings with the Bedford and Portman Estates, as well as, the Crown Estates.

In this instance the tender procedures from the submission of documents, reporting of tenders and the negotiation of final agreed prices with the agreed contractor would not have been considered appropriate or thorough enough for the Estates.

This specification refers to carrying out many different painting specifications based on the Grosvenor and Chesham Estates specification but there is no clear definition of what system is to be used where. I do not believe this property falls within either of these Estates and therefore do not follow the reference to these Estates. A Farrow & Ball paint specification has been suggested to internal joinery. This specification is considered excessive when a Dulux specification would

suffice and is typically half the supply cost of Farrow & Ball paint, and is considered satisfactory by most of the Estates I have been involved in.

11. The tender documents refer to a drainage report, although a copy of this document has not been seen. Notwithstanding this a provisional sum figure of £15,000.00 has been included in the document, which is considered excessive. The extent of the works likely would amount to carrying out a CCTV survey, jet washing pipe runs and possible lining works to any defective pipework. A survey to determine and confirm the level of works should have been carried out to fix these costs prior to requesting such a large sum of money from the residents.
12. No BS reference is given to allow effective pricing of the emergency lighting installation in accordance with any agreed practice.
13. The services section of the works under the specification (Section 16.0) does not represent a "quantative" breakdown of items of works that contractors are able to cost on a like for like basis.
14. In total, 8 No contractors were asked to tender for these works. Initially 6No were sent tenders, although only 3No of these were able to provide a costed submission. A further 2No contractors were asked to submit tenders (as noted in GBA letter I received dated 6 February 2003). In my opinion, the reason that only 3No contractors out of a possible 8No were able to provide prices for this document is that this specification is not clear on the extent of the work required and therefore submitting a tender would be considered a risk.
15. I do not consider any judgment can be made on the priced submission by Gleasons (the second lowest tender) as a single total sum was provided with no breakdown. This should have been requested by BGA. It is likely



that a basic arithmetical error in any of their calculations (which would be more easily identifiable with a tender breakdown) would have gone unnoticed. It is possible that their tender could have been more competitive than Killby & Gayford's. An example of the effect of such an error can be seen in CLC's tender (services section) which amounted to a difference of over £250,000.00.

16. Budget prices for the specified works (Mechanical/electrical and lift works) were submitted to all contractors in the form of engineer's reports. This is not normal procedure, and should not have included costs. Each contractor should have sufficient information and detail in the specification and schedule of works to price the works – i.e. a full specification for repairs and replacement should have been prepared.
17. It must be noted that all the service works which have been based on the service engineer's report have been done so on a purely "visual" basis. It is not possible to determine disrepair unless all these elements are tested and subsequent replacement fully scheduled.
18. The specification for cleaning of brickwork using a high pressure water lance is, in my opinion, unsuitable. Such a process is likely to be detrimental to the brickwork which already needs repair in a number of areas. Furthermore, if this method of cleaning is used (more commonly used on stone) then sufficient sealing of all windows, etc is required to ensure there is no water ingress internally. There is no reference to this provision within the specification.
19. There is no question that works are required to the roof, although this specification allows for a completely new roof to the premises including an upgraded system incorporating Kingspan Thermarroof insulation. Whilst it is clear that there are many typical defects associated with an asphalt roof



of this age, i.e. rippling and blistering of the asphalt, together with inadequate flashings, I do not consider entire replacement is necessary or justified. The existing asphalt roof covering can be adequately treated, i.e. blisters heated and made good, and an overlay roofing system used.

This would cost considerably less than the entire roof replacement and has been successfully completed on similar projects in which I have been involved where the condition of the roof was worse and water ingress more pronounced. Whilst minor internal damp staining was evident to the soffits of the top floor flat, this will all be adequately resolved with a roofing overlay (Photo 7-10). More substantial damp to one particular wall to the bedroom of the top flat (Photo 14) is as a result of a flashing failure. All flashings to the main roofs need to be re-pointed and/or replaced. I do not consider, from my inspection, that the roof boarding and/or structural timbers will be significantly defective and there is no evidence that they need replacing or repairing.

If the landlord wishes to upgrade the roof, including providing improved insulation, this extra cost should be covered by them and the direct beneficiary of improved insulation to the roof, namely the top floor resident.

With an overlay system the need for an extended temporary roof scaffold would not be necessary resulting in a further reduction in costs.

A further important point to consider is the pending planning permission for a proposed penthouse (Appendix 3). Whilst this is only consideration for the undertaking of such works, there is a very likely chance these works will be carried out in the short term and therefore consideration for a full roof replacement is inappropriate, particularly when an overlay system is sufficient for many years and more cost effective.

20. The gable roofs are not considered to be in disrepair. I do not anticipate that works over and above ensuring all tiles are adequately secured is required. No internal water ingress to the flats suggests that this element of the building is not defective. This appears to have been the view of the original estimator from Killby & Gayford who included a reasonable figure for this work at £1,095.00 but following subsequent post tender meetings with BGA has increased to £14,672.33.
21. In a number of instances the poor installation of pigeon netting has caused disturbance to perimeter flashings to the roof (Photo 6). This method of fixing should not have been accepted at the time of installation and should be resolved by the landlord. The cost included for replacing all the netting is very high on the basis that the scaffolding will be erected to provide full access. Justification should be provided.
22. The common parts of the premises are generally worn and are due for redecoration. In a number of areas the wall coverings are defective. These defects are not as a result of water ingress from any roof failure but due to the excessive temperature of the common part areas causing large degrees of drying out to the walls and subsequent shrinkage of the wall coverings. This has also caused cracking to skirtings and balustrades.
23. The specification allows for stripping off all paintwork to previously painted stonework. This is excessive and not necessary. The contractor should remove any loose paintwork (not that any areas were noted) back to feathered edges prior to redecoration.
24. Under items 5.05, 12.07 and 13.05 (the latter two references appear to be repeated) the replacement of doors is included. These doors are not defective or rotten.



25. The replacement of ironmongery (which does not appear to need replacing – Photo 21) and light fittings to the commons parts has not been quantified or specified to enable a like for like pricing by the tendering contractors.
26. The document allows for an additional cost for IEE electrical testing. This test should have been undertaken as part of the specification to determine the actual works that need to be undertaken (see comment 18). Notwithstanding this, the document shows the IEE test as a separate cost. This testing is a requirement following the completion of any electrical works under contract and should not incur an additional cost. All existing electrical installations in the building should have been tested as part of the on-going maintenance but this does not appear to have happened even though significant works have been undertaken in the past.
27. The lift is in poor repair and certainly requires major works. The specialist lift report mentions that the lift car cannot be increased in size to accommodate disabled users due to the constraints of the lift shaft, yet the specification requires compliance with Part M and has been costed within the document. A summary breakdown from Killby & Gayford has been prepared for the works required to the lift. This shows the required works to the lift (which should be firmed up following the survey). This work is ideally suited to the IFC 84 contract where the sub-contractor would be nominated and subsequent saving secured.
28. There is nothing in the specification to control the expenditure of provisional sums, both those inserted in the main document (£110,000.00) and also additional items included by the contractor. In my experience, without suitable control procedures in place, these figures are in most cases fully expended by the contractor.



29. Brian Gale Associates refer in their tender report summary that following Killby & Gayford's second tender submission their tender is fully costed and is unlikely to rise significantly during the contract although they have as many provisional sum items included as their first submission. Refer to comment made under section 4.
30. Brian Gale Associates tender report does not comment on any of the cost comparisons received by the tenderers, which is typical practice when reporting tender results. It is not possible without a more comprehensive cost breakdown to compare the costs of the lowest two tenders. BGA did not ask for further breakdown prices to be submitted. Without being able to compare similar work elements on a cost basis, it is not possible to confirm the contractor has understood the scope of works involved.
31. None of the discussions with the contractors during the tender analysis stage have been recorded, particularly the clear reasons why Killby & Gayford increased their original submission by £ 112,501.33
32. On both forms of tender submitted by Killby & Gayford, an additional dayworks rate of 165% on the actual cost of labour has been allowed. This is unreasonably high and needs to be justified.
33. Killby & Gayford have not been queried over their contract period, which in my opinion is not sufficient for the works to be completed. Both the other contractors who submitted tenders stipulate a contract period of 22 weeks. There is a risk that Killby & Gayford apply for an extension if this timescale is not achievable which is likely to add further additional costs.
34. A sinking fund of approximately £125,000.00 is available to contribute to the cost of this work but this money and its release has not been mentioned to any of the residents. The purpose of such sinking funds is



to cover the cost of these major works. It cannot be seen to be a contingency as provision is already made in the contract.

35. Part of the benefit of a tenancy agreement is that there should be freedom from worry about unexpected repair bills. This can be achieved by correct phasing of the works over a period of years employing a degree of planned maintenance which reduces the impact of high costs on the residents at any one moment in time and ensures that works are not necessary through landlord's neglect. I do not consider that all the works included within this one specification benefit from running under the single contract and economies of scale in doing so would be minimal.
36. During our inspection we found a specification with schedule of works in the boiler room relating to works carried out in 1998 (Photo 1.). It appears there is some duplication on the works that were carried out in 1998, with those being requested in this specification and this needs clarification. This document contains schematic diagrams, which are also costed in this tender document, together with other elements of work such as sterilisation of the system. The boilers were working adequately at the time of my inspection and a number of components, etc have been upgraded/repared recently. It is not possible to determine that the boilers are out of repair (Photos 2 & 3)
37. Works to the radiators in the block include new TRV valves (ref 16.07 (vi). This work should not be required if the thermostat for these radiators is to be relocated. One or other is needed not both.
38. I am of the opinion that if the decorations have been satisfactorily completed in previous projects to an adequate standard then deterioration of timber elements would not have been as significant as noted to the rear



elevations under these works. Previous works have not been performed to an adequate standard e.g previous installation of pigeon netting which has resulted in affecting flashings and also inadequate easing of windows and poor decoration generally which has led to additional works which could have been avoided. As a project monitoring fee of 10% is allowed for overseeing this work this should not have happened.

39. The significant risk of damaged asbestos to the boiler room from the damaged ceiling should be contained and removed as a matter of urgency. I do not consider the figure submitted by Killby & Gayford to be sufficient to cover the cost of specialist removal. This work should not be left until the main works are secured and should have been rectified on discovery. Other Health and Safety matters were noted on-site particularly poor access to the roof. Adequate grab bars, etc should be included in the proposed works as access is very unsafe.



REPAIR VERSUS IMPROVEMENT

The following works listed (provided with their specification reference) indicates where, in my opinion, works exceed the repair and re-decoration covenants that the tenant is required to pay through a service charge

- The installation of a fire alarm system to the common parts – (Ref: 16.23)
- Essential works to the lift to ensure that its continued life is maintained is certainly necessary and, I understand that a number of components are now redundant. I believe certain works are not necessary and exceed standard repair. A figure of between £25,000 to £35,000 should be sufficient for all necessary repairs and replacement works to the lift to ensure continued life – (Ref. 16.25)
- The services consultants report mentions that the replacement of fuseboards does not need to be included although this has been costed in the tender - (Ref. 16.20)

A number of improvement works are being suggested to the Porters area. I understand that the history behind the Porters area dates back to 2001 when one of the head lessees, the landlord and Basil Properties bought the current Porters flat. The situation since then has been that Porter operations are conducted through a very small room which has been formed without windows etc and currently breaches Health and Safety regulations. The costs of rectifying this current arrangement should not rest with the residents but those benefiting from the previous flat sale. A large provisional sum of £20,000.00 has been included for this work which excludes a further amount for mechanical ventilation - (Ref. 16.25) This should also include any works being suggests for the Porter's toilet facilities.



- Upgrading the entrance intercom. This work is being suggested purely on the basis that the unit appears dated. If cleaned up and matching flat reference information provided then replacement is not necessary. If the landlord wishes to upgrade this equipment then this should be at their sole cost - (Ref. 12.03)
- Replacing all fire doors throughout the common parts is an improvement. The installation of intumescent seals/brushes would provide the necessary compliance without the additional cost of completely new doorsets - (Ref. 14.20)
- The lighting to the common parts needs to be replaced as it is consider to be dated and in part defective. The provision of concealed recessed downlighters, however, is an improvement and the tenants should not solely meet this cost.
- The carpet to the common parts is not out of repair and still has a number of years left before it requires replacement. The only defects noted were in the reception/ground floor area where staining was evident (Photos 19 & 20.)
- All glazing replacement is the responsibility of the individual residents as noted in the lease.
- Plant containers to the reception area are a landlord's improvement.
- Mechanical ventilation to the common part areas of the building is an improvement and not repair. If the heating controls were rectified and the thermostat located in the correct location the condition of these areas would be significantly improved without the need for mechanical extract.



7. OPINION

It is my opinion based on the research and evidence following a review of the specification and the subject property that the tender document is not strong enough to allow the inclusion of fixed costs for the works neither does it correctly identify the extent of the works and in parts is over specified.

Cost control before and during the project is paramount when dealing with the service of Section 20 Notices and the document needs to be tightened to ensure this control is achieved.

Whilst comments have been made in this regard I do appreciate major redecoration and repairs are required to the premises.

I would recommend that the document is amended and re-tendered to an agreed schedule of works.