UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT - service charges – whether cost of insurance against a terrorist incident is a recoverable head of expenditure under terms of lease - true construction of terms of lease.

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) (LEASEHOLD VALUATION TRIBUNAL SOUTHERN RENT ASSESSMENT PANEL)

QDIME LTD **Appellant**

and

(1) BATH BUILDING (SWINDON) MANAGEMENT COMPANY LTD
(2) VARIOUS LEASEHOLDERS AS IDENTIFIED IN THE LVT DECISION

Respondents

Re: Bath Building, 40 Bath Road, Swindon, Wiltshire, SN1 4AT

Before: Judge Edward Cousins

Sitting at: 43-45 Bedford Square, London WC1A 3AS
on
27 February 2014

Mr Justin Bates, of Counsel, instructed by Hazlevine Ltd, for the appellant
The Respondent appeared in person through its Director, Mr Martin Whale

The following cases are referred to in this decision:

Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 89
Chartbrook Ltd v Persimmon Homes Ltd [2009] 1 AC 1101
Commonwealth Smelting v. Guardian Royal Exchange Assurance [1984] 2 Lloyd's Rep. 608, at page 612, affd [1986] 1 Lloyd's Rep 121
Enlayde Ltd v Roberts [1917] 1 Ch 109
Edwards v Baristow [19561 AC 14
Shersby v Greenhurst Park Management Ltd [2009] UKUT 241 (LC)
R v LB Tower Hamlets [2013] EWHC 480 (Admin)

DECISION

THE BACKGROUND TO THE APPEAL

1. This appeal concerns a building known as the Bath Building, 40 Bath Road, Swindon, Wiltshire, SN1 4AT ("the Building"). It is a four-story detached building constructed in the 1980's, and comprises 13 flats. The freehold owner of the Building is Qdime Ltd ("Qdime"), the appellant in these proceedings. The Respondents are respectively (1) The Bath Building (Swindon) Management Company Ltd, being the management company responsible for providing certain services to the flat ("the Management Company"), and (2) the leaseholders of 11 of the 13 flats.

2. The original application to the Leasehold Valuation Tribunal ("the LVT") made by the Respondents dated 18th July 2012 sought to challenge a number of items of service charge expenditure. On 23rd January 2013 the LVT handed down its decision ("the LVT Decision"). Subsequently on 14th February 2013 Qdime sought permission to appeal from the LVT limited to two aspects of the LVT Decision, namely its treatment of:

> (1) terrorism insurance for the years 2010/2011, 2011/2012 and 2012/2013;
>
> (2) cleaning costs.

3. On 18th February 2013 the LVT refused permission to appeal. The observations made by the LVT in its decision state that the grounds of appeal were effectively no more than a disagreement with the Tribunal's findings and its decision. It said that the grounds of appeal represented a re-statement of the submissions made by Qdime in relation to the original application, which the LVT said were considered in detail and at length in its reasons dated 23rd January 2013. It was on this basis that the LVT came to the conclusion that the grounds of appeal set out no basis for any reasonable prospect of a successful appeal.

4. Thereafter, on 1st March 2013 Qdime sought permission to appeal the LVT Decision from the Upper Tribunal (Lands Chamber) on the same two grounds of appeal previously rejected by the LVT. In his decision dated 12th June 2013 the Deputy President granted permission to appeal on the first ground as to whether the costs of insurance against a terrorist incident was a recoverable head of expenditure under the lease in the years 2010-2013, but refused permission to appeal on the issue of the cleaning costs. The Deputy President made the following observations;-

> "The applicant has a reasonable prospect of success in persuading the Upper Tribunal that the LVT misinterpreted paragraph 6 of schedule 5 of the lease, and the issue is of significance for these and future years…. The appeal will be by way of a review with a view to re-hearing".

THE CASE FOR QDIME

5. The crux of Qdime's submissions is that the LVT has erred in law in the LVT Decision. Qdime submits that terrorism insurance is recoverable as a service charge by reason of the the fact:-

> (1) The wording of the leases is such that Qdime is obliged to procure terrorism insurance as part of its obligations to insure the Building; or in the alternative
>
> (2) Qdime has in any event exercised its reasonable discretion in procuring terrorism insurance in accordance with the terms of the leases.

The lease provisions

6. The leases of the flats contained within the Building are all in common form. As granted, the leases were made between (1) the original reversioner, Linden Homes Western Ltd ("the Landlord"), (2) the Management Company, and (3) the individual leaseholders. Qdime is the assignee of the reversion immediately expectant upon the terms granted under the leases, and therefore is the current landlord under the terms of the leases. The lease granted in respect of flat 3 to Ms Irena Jakubowski-Birch has been utilised as the standard lease for the purposes of the appeal ("the Lease"). It is included at pages 834 to 880 in the bundle of documentation prepared for the appeal hearing ("the Bundle"), to which reference will be made in this Decision.

7. By clause 4 of the Lease the Landlord covenanted to "... observe and perform the obligations set out in schedule 5..." Paragraph 6 of schedule 5 provides for the Landlord:

> "To keep the Building including the Demised Premises insured to its full reinstatement value against loss or damage by fire and the usual comprehensive risks in accordance with the CML recommendations in that respect from time to time and such other risks as the Landlord may in its reasonable discretion think fit to insure against…"

8. In accordance with the terms of paragraph 16 of schedule 7 (part 2) to the Lease the Company covenanted with the Landlord to pay on demand:

> "…the costs of the insurance policy put in place by the Landlord in accordance with paragraph 6 of schedule 5…"

By virtue of the provisions contained in schedule 4, part 2, the leaseholders of the Building ultimately pay these costs as part of the service charge paid to the Management Company as being expenses reasonably and properly incurred in each Maintenance Year (as defined).

9. In July 2012, the Managment Company and eleven of the leaseholders issued proceedings in the LVT disputing, inter alia, part of the cost of the insurance policy. In particular, they disputed the "terrorism insurance" element of the policy, which they asserted was unreasonable.

10. That part of the LVT Decision dealing with terrorism insurance is contained paragraphs 136 to 138 (at pages 140 to 143 of the Bundle). In summary, the findings of the LVT are as follows:

(1) the Management Company is contractually obliged to pay an insurance premium;

(2) however, this only extends to terrorism cover if the Lease expressly or impliedly so permits or requires it;

(3) for the purposes of the case terrorism cover means "acts or persons acting on behalf of or in connection with, any organisation which carries out activities directed towards he overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government *de jure* or *de facto*" (as defined in the Pool Re scheme);

(4) Paragraph 6 of schedule 5 contains no express obligation to insure against terrorism, but provides for cover in respect of three categories of risk, namely loss or damage by fire, the usual comprehensive risks, and such other risks as the Landlord may in its reasonable discretion think fit to insure against.

(5) The covenant to insure against loss or damage by fire does not include terrorism, and the covenant to insure against usual comprehensive risks also does not include terrorism. Further, there was no evidence of any particular risk of terrorist activity;

(6) There was no evidence of any "conscious or express decision" to insure against terrorism, and the Landlord had not exercised any discretion to decide to insure the Building against terrorism for the purposes of paragraph 5 of shedule 6;

(7) If that interpretation is incorrect, then it is not a reasonable exercise of discretion to insure against terrorism given that there is no evidence that the Building is vulnerable to terrorism as defined in the Pool Re scheme; or that the area in which the Building is situated is vulnerable to terrorism; or that Swindon in gerneal is vulnerable to terrorism.

THE CASE FOR QDIME

The Landlord's obligation to obtain terrorism insurance under the terms of the Lease

The Construction Issue

11. It is a fundamental plank of the case presented by Counsel for Qdime that the Lease clearly obliges the Landlord to insure the Building against "... the usual comprehensive risks in accordance with the CML recommendations....from time to time". The relevant CML guidance produced by the Council of Mortgage Lenders is at Tab Q22 of the Bundle, and the insurance provisions are contained in clause 6.14 (at pages 449 to 450). Clause 6.14.2 sets out a list of potentially insurable risks. Included in this list is "explosion", and it is submitted that the Landlord is required to insure against the risk of explosion, which, it is submitted, by definition includes "terrorism" or "terrorist activities" when regard is had to the "ordinary meaning".

Ordinary meaning

12. Although it is to be noted that the words "terrorism" or "terrorist activities" are not listed in the CML guidance it is submitted by Counsel that the word "explosion" should be given its ordinary meaning.[1] It is said that when recourse is had to the "ordinary meaning" it clearly includes explosions caused by terrorism. In this regard Qdime relies upon the definition of "explosion" provided by the Oxford English Dictionary. [2] The definition contained in the Shorter Oxford English Dictionary is in similar terms.[3]

13. Similarly, in *Commonwealth Smelting v. Guardian Royal Exchange Assurance,*[4] Staughton J considered that an "explosion" was "...an event that is violent, noisy and.., caused by a very rapid chemical or nuclear reaction..." Qdime also relies upon on a passage in *Woodfall: Landlord and Tenant*.[5] Footnote 7 to which reference is made in the cited passage contains a reference to the *Commonweath Smelting* case,

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[1] See *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 89; *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101.

[2] *i.e.* "Of a gas, gunpowder, etc.; The action of 'going off with a loud noise under the influence of a suddenly developed internal energy;... Of a boiler, bomb, gun, etc.: The action of suddenly bursting or flying in pieces from a similar cause."

[3] "The action or an act of bursting or flying into pieces with extreme violence and noise..."

[4] [1984] 2 Lloyd's Rep. 608, at page 612, affd [1986] 1 Lloyd's Rep 121.

[5] "Where the covenant specifies particular risks against which the property is to be insured, it is considered that those risks would be given the same meaning as in the law of insurance. Risks commonly specified are… explosion...", at paragraph 11-094.

and then goes on to state "'''it is considered that an obligation to insure against explosion *includes an obligation to insure against terrorist attack*." (My emphasis).

14. In section 2(2) of the Reinsurance (Acts of Terrorism) Act 1993 ("the 1993 Act" "acts of terrorism" are defined as being:

> "…acts of persons acring on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the united Kingdom…"

15. Thus it is submitted, the word "explosion" is apt to include acts of terrorism.

Insurance against an event, not any particular cause of the event

16. Further, Counsel for Qdime submits that insurance is placed in respect of a particular risk, rather than in relation to the particular method by which the risk might happen. In this regard Qdime relies upon the case of *Enlayde Ltd v Roberts.*[6] In this case the covenant to insure against loss or damage by fire was to be given its ordinary meaning. The onus was on the party seeking to argue for a different construction. On the facts, that burden had not been discharged. It is submitted by Qdime that the same logic holds good in the present case. The obligation is to insure against explosion, not against any particular method by which an explosion might be caused.

Conclusion

17. Thus it is contended that the LVT was incorrect in its analysis. On the Construction Issue the Lease requires the Landlord to obtain insurance against terrorism.

Discretion to insure

18. Qdime then propounds an alternative ground of appeal. The Lease provides that the Landlord may insure against ". . such other risks as the Landlord may in its reasonable discretion think fit to insure against..."

[6] [1917] 1 Ch 109. In this case the landlady was required to insure ".... against loss or damage by fire..." In such an event the tenant would then contribute towards the costs of that insurance. The landlord obtained insurance against fire, but cover was excluded if the loss or damage arose out of "invasion, foreign enemy", or "military or usurped power." In 1915, the property was destroyed by fire caused by bombs from enemy aircraft. The landlady admitted that she had failed to place insurance which covered against fire caused by enemy activity, but denied that this was a breach of covenant, contending that one had to read a limitation into the covenant to insure so as to exclude this cause of fire. This argument was rejected by the court.

Discretion exercised

19. It is submitted that the LVT (wrongly) concluded that there was no evidence that any discretion had been exercised on the part of the Landlord. Counsel for Qdime enumerates a series of points which, it submits, provides ample evidence of the exercise of discretion by the Landlord.[7]

20. Further it is contended that the LVT has given no, or no adequate, reasons why this evidence was not accepted. It is not said, for example, that the Tribunal found the Landlord to be dishonest. In such circumstances, it is submitted that the Tribunal has reached a decision which is wrong in law.[8]

Reasonable discretion

21. Further it is submitted by Qdime that on the assumption that the Upper Tribunal accepts that discretion was exercised by the Landlord, then it is necessary to consider the issue as to whether the exercise of the discretion was"reasonable".

22. In making this assessment, the LVT was not required to decide for itself what decision it would have made. It is submitted that in reviewing the discretionary decision of the Landlord the LVT is required to satisfy itself that the decision was within the reasonable range of decisions to be made by the Tribunal.[9] Qdime contends that the LVT did not adopt this approach. Instead (and wrongly) it concluded that there was no evidence of any particular terrorist threat and therefore the decision must be unreasonable.

23. In doing so, Qdime submits that the LVT erred as follows:

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[7] See Annex 1.

[8] "I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test." Per Lord Radcliffe in *Edwards v Baristow* [19561 AC 14,, at page 36.

[9] See *e.g. Shersby v Greenhurst Park Management Ltd* [2009] UKUT 241 (LC), [36]. "The question of the variation of the percentage proportions turns upon whether the Respondent properly exercised its powers of variation under Part III of the Fourth Schedule. The trigger which engages the operation of this provision is 'if in the opinion of the Manager…' The relevant question is whether the Respondent (as the Manager) reached a genuine and bona fide opinion that it had become equitable (the word 'necessary' is not relied on) to recalculate the percentage proportions. It is not for this Tribunal to conclude whether it has become equitable to do this. This Tribunal's only function is to conclude whether the Respondent reached a lawful decision on the point, being a decision which was within the range of reasonable decisions (as opposed to being a perverse decision) and whether the Respondent took into consideration relevant matters and did not take into consideration irrelevant matters. The question is whether this was a bona fide decision being one within the range of reasonable decisions and being reached taking into account relevant and ignoring irrelevant matters." *Per* HHJ Huskisson.

(1) it overlooked the unchallenged evidence from the Landlord that their brokers, Bluefin, had obtained insurance which placed the Building in "Zone B" and that it carried the same risk as Inner London, the Channel Tunnel and the central business districts of major towns and cities[10] It is said that the only logical conclusion to be drawn from that evidence is that the rate is based on calculations which consider the exposure of the insurers under the relevant policy. There was no evidence before Tribunal which contradicted this evidence.;

(2) the LVT gave no (or no apparent) weight to the RICS Code. The Code provides that "...serious consideration should be given to the taking out of terrorism insurance."[11]The Code has been approved by the Secretary of State under section 87, Leasehold Reform, Housing and Urban Development Act 1993 as promoting "desirable practices" in relation to residential property management.[12]

24. It is contended by Qdime that in the public law sphere, it is settled law that guidance of this sort is to be afforded great respect and that departures from the terms of the guidance need to be well-reasoned and justified.[13] It is submitted that there is no reason why any different approach should apply in private law proceedings. The LVT should have taken note of the RICS Code and, in particular:

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[10] See the letter from Bluefin dated 27th November 2012, at page 183 of the Bundle.

[11] At paragraph 15.12, at page 479.

"87.Approval by Secretary of State of codes of management practice.

(1) The Secretary of State may, if he considers it appropriate to do so, by order;-

(a) Approve any code of practice;-

(i) which appears to him to be designed to promote desirable practices in relation to any matter or matters directly or indirectly concerned with the management of residential property by relevant persons; and

(ii) which has been submitted to him for his approval;

(b) approve any modifications of any such code which have been so submitted; or withdraw his approval for any such code or modifications."

[13] Reference was made by Qdime to the recent review of authorities in *R v LB Tower Hamlets* [2013] EWHC 480 (Admin) (at [35]):"In summary, therefore, the guidance does not have the binding effect of secondary legislation and a local authority is free to depart from it, even 'substantially'. But a departure from the guidance will be unlawful unless there is a cogent reason for it, and the greater the departure, the more compelling must that reason be. Conversely a minor departure from the letter of the guidance while remaining true to its spirit may well be easy to justify' or may not even be regarded as a departure at all. The court will scrutinise carefully the reason given by the authority for departing from the guidance.... Except perhaps in the case of a minor departure, it is difficult to envisage circumstances in which mere disagreement with the guidance could amount to a cogent reason for departing from it." *Per* Males J.

(a) the desirability of obtaining terrorism insurance; and,

(b) that the Code does not link the acquisition of such insurance to the risk posed in any given case. The nature of insurance is that one is guarding against unpredictable and unexpected events.

25. In short, it is submitted that exercising a discretion so as to accord with the RICS Code is a reasonable exercise of discretion.

THE CASE FOR THE RESPONDENTS

26. For their part the Respondents rely upon their statement of case dated 15th August 2013 submitted by Mr Whale on their behalf, and a statement of facts and issues dated 13th February 2014. In the latter document it is said that the facts were "undeniable but not agreed", and the issues "not agreed" . Mr Whale makes a number of points in these documents to which he made reference during the course of his oral submissions. He also placed reliance upon the findings of the LVT which he submitted had come to the correct conclusions in the circumstances. In his submissions endeavours to answer the various points made by Counsel for Qdime as to the requirements to insure against terrorism as detailed in paragraph 6 of Schedule 5 to the Lease (see paragraphs 11 to 17, above). Essentially Mr Whale submits that the word "explosion" does not include terrorism or terrorist activities, and such a meaning cannot be implied or read into the clause.

27. One feature of the Respondents' case is the assertion that Qdime's statement of case in the appeal is "riddled with inaccuracies and misrepresentations", and which are repetitious of similar failures in earlier documentation. It is also asserted that Qdime has continously failed to provide any evidence of what is included under the heading of terrorism cover, and has failed to disclose relevant evidence such as policies, schedules and receipts for premiums. It is asserted that no evidence has been provided that the Landlord had in fact incurred any costs in respect of the payment of terrorism insurance. Further, it is said that following the enactment of the 1993 Act Pool Re Limited is the only provider of terrorism insurance in the UK. Without a proper understanding of the facilities and restrictions of this sole provider it is impossible to make an appropriate determination on the matter of terrorism insurance cover. Further Mr Whale asserts that Qdime has no discretion to exercise in respect of providing such cover in relation to the Building.

28. Mr Whale also submits that a terrorist attack is not the same as the definition of terrorism as contained in section 2(2) of the 1993 Act, and asserts that there is a clear contradiction in the submission that terrorism insurance is included as part of the "usual comprehensive risks". Mr Whale also made reference to an earlier decision of the LVT dated 17th February 2001 (case number CH1/00HX/LSC/2010/0124) in support of his submissions where the decision was reached that the costs incurred by Qdime, and its former managing agents, should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the

lessees, pursuant to sections 27A and 20C of the Landlord and Tenant Act 1985, as amended. I found it difficult to understand the relevance of this decision to the present case.

29. In summary, the Respondents rely upon the LVT Decision. They submit that the findings were in no way perverse; that the LVT did not consider unpersuasive evidence; that the LVT gave weight to credible matters and not to peripheral matters; and that the LVT had properly considered all the evidence and came to the correct conclusions in accordance with the facts. It is their considered view Qdime has failed to show any evidence or provided any argument to suggest that the LVT Decision was incorrect, or made on issues that were outside its remit.

THE DECISION

30. In my Judgment on the Construction Issue the LVT was incorrect in its analysis of the relevant provisions of the Lease as to the obligation of the Landlord to insure against terrorism. I find that on a true construction of the provisions contained in the Lease, by virtue of clause 4 the Landlord is obliged to observe and perform the obligations set out in schedule 5 of the Lease. As I have set out in paragraph 11*ff*, above, paragraph 6 of schedule 5 provides for the Landlord to keep the Building including each of the flats contained therein insured in accordance with CML recommendations in that respect from time to time…." . I find that the covenant to insure against "….. the usual comprehensive risks….." also included insurance against terrorism by reference to the CML recommendations. Accordingly I adopt the reasoning of Counsel for Qdime, and I reject the arguments of Mr Whale in this regard.

31. In my judgment the crux of the matter is that the obligation to insure against explosion includes insuring against a terrorist attack, and that the word "explosion" should be given its ordinary meaning.[14] I therefore agree with the submissions made by Counsel for Qdime that the ordinary meaning of the word explosion includes explosions caused by terrorism. The various cases, the passage in Woodfall, and the definitions in the Oxford Dictionaries, to which I have made reference in paragraphs 12 and 13, above, support this interpretation.

32. I also agree with Counsel for Qdime that the obligation is to insure against explosion, but not against any particular method by which an explosion might be caused.

Discretion to insure for terrorism

33. If, however, I am incorrect in that analysis, it is then necessary to have regard to the further words contained in paragraph 6 of schedule 5 to the Lease which provides that the Landlord can insure against " ….. such other risks as the Landlord may in its reasonable discretion think fit to insure against….."

[14] See the *Investors Compensation Scheme* case, and the *Chartbrook* case, and footnote 1, above.

34. Counsel for Qdime challenges the conclusion reached by the LVT that there was no evidence that any discretion had been exercised. The point that Counsel makes is that this assertion is simply incorrect in that there was evidence before the LVT that a discretion had been exercised. Annex 1 to this Decision documents the instances where that discretion had been exercised by the Landlord. It is to be noted that the words "discretion" and "reasonable discretion" are expressly mentioned.

35. Accordingly, I find that the Landlord did exercise discretion in the circumstances, and that the LVT in its Decision was incorrect in its finding that it did not.

36. In such circumstances, therefore it is then necessary to analyse whether or not the discretion that was exercised by the Landlord was in fact exercised "reasonably" . Counsel for Qdime relies upon the case of *Shersby* (see pargaraph 22, and footnote 9, above). As it is stated in paragraph 36 of that decision it is the Tribunal's only function is to conclude whether or not a lawful decision had been reached in the circumstances, and was within the range of reasonable decisions, as opposed to it being construed as a perverse decision.

37. In my Judgment the LVT did not adopt this approach. What it did do is to conclude that there was no evidence of any particular terrorist threat and therefore the decision made by the Landlord must, by definition, be unreasonable.

38. As I have set out in paragraphs 23 and 24, above, Counsel for Qdime makes a series of points to the effect that the LVT made a number of errors namely, that it overlooked the unchallenged evidence of the Landlord that their brokers, Bluefin, had obtained insurance which placed the Building in "Zone B", that this carried the same risk of exposure as to Central London and other such places; and that the LVT apparently gave no, or no apparent weight, to the RICS Code which provides that serious consideration should be directed to the taking out of terrorism insurance; and that it is settled law that such guidance is to be afforded great respect.

39. Thus, I agree with the submissions made by Counsel for Qdime that the exercise of a discretion so as to accord with the RICS Code is a reasonable exercise of discretion.

40. In such circumstances, I therefore find that in the alternative that there had been a reasonable exercise of discretion on the part of Qdime as to the various steps that it took, and I adopt Counsel's submissions in this regard.

41. For the above reasons in my Judgment the LVT Decision is unsupportable. On this Review I therefore substitute the following decision, that

> (1) Qdime is required under the terms of the provisions contained in the Lease to obtain terorism insurance; alternatively,

(2) Qdime has preoperly and reasonably exercised its discretion in obtaining such insurance.

Dated 11th June 2014

HH Judge Edward Cousins

ANNEX 1

1. "…The Respondent has instructed its broker that the policy for the [Building] is to include terrorism cover…." (see the Landlord's Statement of Case at page 354, paragraph 132)

2. "... In this instance the [Landlord] has used its reasonable discretion and has chosen to obtain terrorism insurance for the building. It is the [Landlord's] submission that electing to obtain terrorism insurance in respect of the [Building] is reasonable and within the Landlord's rights under the lease." (see the Landlord's Statement of Case at page 357, paragraph 156)

3. "... the [Landlord] still exercises its discretion to provide terrorism cover for all of those properties within its portfolio which it considers to be at risk. It is the [Landlord's] submission that, in exercising its discretion this way, it is acting reasonably." (see the Landlord's Statement of Case at page.357, paragraph 161)

4. "…the [Landlord] would clarify that it has chosen to acquire terrorism insurance for all ground rent investment properties it owns.., the [Landlord] chooses to insure for terrorism as it believes it is a prudent risk to insure for." (see the Landlord's Supplemental Statement of Case at page 181**,** paragraph 38)