

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0049/02/13

In the Matter of 1 Tywod Arian, Lon Las, Morfa Nefyn, Pwllheli LL53 6YN

In the matter of an Application under Sections 27A and 20C Landlord and Tenant Act 1985

TRIBUNAL AVS Lobley Chair
C Williams FRICS

APPLICANT IR Collins

RESPONDENTS RE Griffiths and S Bolton trading as GB Developments

ORDER

1. In 2007, Mr. Collins bought a lease for 250 years of a flat in the residential development which became known as Tywod Arian in Morfa Nefyn, Pwllheli. The flat is on the ground floor of one of two blocks in the development. Clause 5 of the lease provided for the Landlord's repairing obligations in respect of the common parts and for the provision of lighting and heating of the common parts, cleaning of windows, planting and maintaining of plants, trees, shrubs, garden, grassed areas and landscaped areas, installation and maintenance of lifts and the employment of any necessary persons. The tenant was obliged to pay a proportion of the costs of providing the above services, defined as a "fair proportion". Clause 4.1 of schedule 3 defines this proportion as being "such sum as the management company or its agent shall consider appropriate on account of the Tenant's Proportion taking into account the nature of the Services and the extent of the Services to be provided". The definitions clause provides that service costs include costs and expenses actually disbursed or incurred during the year in question but also expenses and outgoings and other expenditure of a periodically occurring nature whenever disbursed, incurred or made.
2. Mr. Collins was dissatisfied with the increased amount being claimed by way of service charge and after some correspondence with GB Developments, applied to the Leasehold Valuation Tribunal on 8th February 2013 for a determination in respect of the reasonableness of the service charges for 3 years, for the period 6th August 2011 to 11th October 2012 (£1,417), the period 12th October 2010 to 5th August 2011 (£1,210) and the period 11th October 2009 to 5th October 2010 (£1,470). It was said that he wished to make an application in respect of Section 20C. The main point of dispute was the janitor's costs, as Mr. Collins said that the janitor's time was wholly charged to the tenants including time spent preparing the Landlord's own apartments for rent or sale or on capital items which should be development costs. It was said the sums in dispute for the three periods (to 5th October 2012, 5th August 2011 and 11th October 2011) were £714, £490, and £769 respectively.

3. Tywod Arian is a small residential development comprising 2 blocks. Mr. Collins' flat is on the ground floor of block A, a 3 storey block with 2 car parking spaces in front of it. Block B is adjacent with more car parking and a small hall way linking the blocks and giving access to the rear and the lifts. Block B has more extensive car parking in front of it. There are 22 flats in total split between Block A and Block B. Both blocks have shrubs to the front and there is a grassed area to the back, which also contains a bungalow which had been part of the development and which has been sold. The owners of the bungalow have a right of way over the grass to the front. There are walkways to the rear, which are chrome and glass, a lift for each block and a games area in the basement. This contains sauna and steam rooms, a gym area, showers and a games room.
4. The Tribunal inspected the property on 20th June 2013, when both Mr. Collins and his son and Mr. Griffiths and Mr. Bolton were in attendance. The hearing took place thereafter at Gwynedd County Council, Gwyfor Area Office, Pwllheli attended by the parties. Mr. Collins produced a helpful schedule summarising his position in relation to the service charges. Besides the disputed janitor's costs, Mr. Collins also raised issues as to the cost of maintenance of the lifts, electricity, roofing and landscaping.
5. Mr. Griffiths had previously produced a copy of the management company's contract with Kone PLC. This was a 3 year agreement from 1st June 2012 at an annual cost of £2,439 (excluding VAT). Included in the service charges for the three years in dispute are charges of £2,513.76 (October 2009), and £2,771 (October 2011). Mr. Griffiths explained at the hearing that Kone had installed the lifts and although he had obtained another quote for the maintenance contract, which had been slightly cheaper, that had not included a call out service. Mr. Collins now accepted the cost of the contract although previously he had not seen any alternative quote.
6. Mr. Collins did not pursue his objection to the charges for electricity though the amounts charged in the service charge accounts did not match with the schedule provided by Mr. Griffiths, who explained it had been very difficult to obtain detailed information from Scottish Power. However, as the schedule related only to block B, Mr. Griffiths agreed to obtain the information in relation to block A and forward this to the Tribunal and Mr. Collins within 14 days.
7. Mr. Collins accepted amounts charged in relation to the service charge for the period to 11th October 2010 in respect of Sovereign Chemicals. He had objected to the charge for Huys Gray as he considered this was warranty work and the responsibility of the freeholder. Mr. Griffiths explained this was the cost of repairing a small leak. Mr Thomas did maintenance as well and this was to avoid a claim on the insurance, the excess of which was £2,000. Mr. Collins had not been aware of this as he had not been shown a copy of the policy. Mr. Griffiths agreed to produce a copy and Mr. Collins accepted the costs of Huys Gray and John Owen. Mr. Collins queried the costs of the accountant as his suspicion was that any invoices were just being put down to the service charge, whatever they related to, including development costs. The pathway for the bungalow had been done. In addition, Mr. Thomas' hourly rate was £11.50 but the leaseholders were being charged £15 and the freeholders could not just increase the charge without consulting. He considered the service charge was too high and was out of line with service charges for other developments in the area. Mr. Griffiths said there was no development work being done, work on the bungalow was charged separately, landscaping work had been done and the two car parks in front to Mr. Collins apartment had been improved. Mr. Thomas also cut the grass, cleaned the chrome and walk ways and he opened up the gym in the morning and evening. He was on

call and was the contact number for the police and the fire brigade. Cleaning the apartments was charged separately. The uplift to £15 per hour was to cover the management costs.

THE TRIBUNAL'S FINDINGS

8. Pursuant to Section 19 of the Landlord and Tenant Act 1985, relevant costs shall be taken in to account in determining the amount of a service charge payable for a period (a) only to the extent they are reasonably incurred, and (b) where they are incurred for the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
9. Mr. Collins had accepted some items of dispute in the service charges as set out above so that the matters to be determined by the Tribunal related to the costs of the janitor (including landscaping costs).
10. In relation to the charges in respect of Scottish Power, as mentioned above, Mr. Collins did not pursue his objection with any force but Mr. Griffiths, as requested by the Tribunal, produced a breakdown of the electricity costs, with reference to invoice numbers. The Tribunal considered it reasonable to accept that the electricity costs had been incurred where invoice numbers have been produced and accepted those costs as being reasonable. The amounts allowed in respect of electricity costs are therefore as follows:

	BLOCK A	BLOCK B
2009/10	£947.02	£3,170.43
2010/11	£600.99	£2,518.78
2011/12	£1,080.20	£3,068.30

11. So far as the janitor's costs are concerned, the Tribunal accepted as being reasonable the costs charged in respect of landscaping, which was allowed for in the lease. Otherwise, whilst the Tribunal accepted Mr. Griffiths' evidence about the need for a reliable janitor who would reliably be on site morning and evening to open up and close the gym, be the contact for emergency services, be available for the tenants on site and to carry out maintenance and landscaping and on the whole, accepted that having a janitor available justified the hours charged, the Tribunal only accepted these charges to the extent of evidence that hours being charged for were supported by invoices. The Tribunal did not accept that an uplift to £15 per hour was in any way justified. GB Developments were able to charge a management fee pursuant to the lease, but not make a profit by uplifting the janitor's hourly charge. The Tribunal, having checked the invoices against the schedules provided had found some errors. The Tribunal therefore allowed the service charges as set out in the attached schedules.

COSTS

12. Section 20C of the Landlord and Tenant Act 1985 provides that a tenant may make an application for an Order that all or any of the costs incurred by the Landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. Mr. Collins had indicated an intention to make an application under this provision in his application. He said that as they were paying their own costs, so should the Landlord. At the hearing this was not pursued and

Mr. Griffiths indicated that they had not incurred any costs in connection with the application (though the Tribunal recognised their own time had been involved). In the circumstances, the Tribunal made no order under Section 20C.

DATED this 1st day of August 2013

A handwritten signature in black ink, appearing to read 'Alberty', written in a cursive style.

CHAIRMAN

Tywood Arian 11/10/09 to 11/10/10

Welsh Water		203.43	
Kone		2513.76	
Sovereign			
Chemicals		77.33	
Huws Grey		111.67	
Huws Grey		37.88	
John Owen		45.35	
Huws Grey		23.14	
Owens (Roofing)			
Ltd		1198.50	
Lerman Quaile		117.50	
Welsh Water		53.13	
Welsh Water		556.23	
Huws Grey		264.29	
Raymond Griffiths		334.00	*Historic Bill
Welsh Water		372.27	
Buildings			
Insurance		1402.35	
Scottish Power Block A		947.02	
Scottish Power Block B		3170.43	
Janitor	1399.25	Hours	16091.38
			<u>27519.66</u>
Charge per flat			1250.89

Tywood Arian

12/10/10 to 05/08/11

Welsh Water		62.78
Welsh Water		186.99
Honeywell		431.05
Honeywell		540.00
JRW Builders		151.35
Welsh Water		64.25
Huws Grey		440.87
Greenwood Group		1030.07
Welsh Water		302.33
Huws Grey		398.14
Honeywell		540.00
Scottish Power Block A		600.99
Scottish Power Block B		2518.78
Janitor	877.5 Hours	10091.25

17358.85

Charge per flat 789.04

Tywood Arian

6/08/11 to 05/10/12

DRW			110.40
Minafon Cyf			72.00
JRW			2168.24
R Griffiths			35.00
R Griffiths			35.00
R Griffiths			35.00
R Griffiths			35.00
Building Insurance			1781.00
Honeywell			540.00
Kone			2771.52
R Griffiths			35.00
Welsh Water			70.59
Welsh Water			275.81
DRW Electrical			2234.22
DRW Electrical			508.85
Honeywell			930.00
Lermam Qualle			228.00
Cost Co			227.88
Scottish Power Block A			1080.20
Scottish Power Block B			3068.30
Janitor	1643.5	Hours	18900.25

35142.26

Charge per flat

1597.38

Claimed	Year		Allowed	Year 1	1250.89
	1	1417.10		Year 2	789.04
	Year			Year 3	1597.38
	2	1210.47			
	Year				
	3	1407.37			
		<u>4034.94</u>			<u>3637.31</u>