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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0004/05/19

In the matter of Tudor Court, Murton, Swansea, SA3 3BB

And in the matter of an Application under Section 27A and sections 19 and 20C of the Landlord and Tenant Act 1985

**Applicant**: Mrs. Johanna Bevan and 24 Others

**Respondent**: Proxima GR Properties Limited
(Represented by Mr. Simpson)

**Tribunal**: Mr. Andrew Grant (Legal chairperson)
Mr. Peter Tompkinson (Surveyor member)
Ms. Juliet Playfair (Lay member)

# Decision

## Introduction

1. By way of an Application made to the Tribunal on the 7th May 2019, Mrs Johanna Bevan (on behalf of herself and 24 other residents whose names appear on a list attached to the Application form) seeks a determination pursuant to section 27 A and 19 of the Landlord and Tenant Act 1985 ("the Act") in respect of service charges payable for the years 2015 – 2019 in respect of certain specified items together with an order under section 20C of the Act.

2. The Tribunal issued directions on the 28th June 2019 which, amongst other things, directed the Applicants to file a Scott schedule and written evidence upon which they intended to rely by 12 noon on the 19th July 2019. The Respondent was ordered to file and serve its evidence in reply by 12 noon on the 9th August 2019.

3. The Applicant sought to rely upon the Application form and attachments and the Scott Schedule which appear at pages 1 – 212 of the hearing bundle. The Respondent sought to rely upon the Witness Statement of Peter James Humphreys and exhibits which is dated the 15th August 2019 and which appears at pages 213 – 1794 of the bundle.

4. The Tribunal listed the matter for hearing on the 14th October 2019.

## Inspection

5. The Tribunal inspected the property at Tudor Court, Murton, Swansea SA3 3BB ("The Property") at 10.00 am on the 14th October 2019.

6. Mrs. Bevan represented the Applicants. The Respondent was represented by its barrister, Mr. Simpson together with the regional manager, Mr. O Donnell and the area manager, Mrs. Alwyn.

7. The Property is designated as a retirement development for the over 55's. It consists of 33 separate flats situated at ground and first floor level across 4 separate blocks together with individual houses situated in communal grounds. It has a full - time manager on site during working hours Monday to Friday.

8. Each block of flats has a communal front door and entrance area with stairs leading to the first - floor flats.

9. The Tribunal inspected one of the flats, the common parts of Block together with other areas of the Estate.

## The Hearing

10. The Applicants were represented by Mrs. Bevan and Mr. J Thomas. Mr Thomas has an interest in flat number 4.

11. The Respondent was represented by Mr. Simpson of Counsel, with attendance from Mr. O Donnell and Mrs. Alwyn.

12. At the start of the hearing the Tribunal asked the Respondent if it proposed to pursue the point made in its statement of case (paragraph 15) that the application should be struck out as the Applicant had named the wrong party in its application. The Applicant has issued the application against First Port Property Services Limited which was the managing agent. The Respondent submitted that the correct Party was Proxima GR Properties Ltd which was the Freeholder.

13. Mr Simpson, on behalf of the Respondent confirmed that it did not wish to pursue that point. The Tribunal therefore gave permission to amend the name of the Respondent to Proxima GR Properties Ltd.

14. The Tribunal indicated that it appeared that there were four issues to be determined, namely: (1) The legitimacy of the proposed implementation of the fire system and door entry system (2) The legitimacy of the removal of £27,000 from the reserve fund to cover the cost of works to flats 6,7,21 and 23 (3) the Proposed charges by "Open View" and (4) The invoice from S.T. Holland Fire Protection UK Ltd dated the 2nd April 2017.The parties confirmed that these were the only matters to be addressed.

## Fire System and Door Entry System – Issue number 1

## Applicants' evidence

15. Mrs Bevan stated that the residents had met with Sally Alwyn in 2018. They were informed that there would be a further risk assessment carried out at the Property by a company called Quantum Compliance. There had been a previous report prepared in 2016 and the next scheduled inspection was not until 2019. However, the Respondent said that it was bringing forward the inspection and that it would be taking place in 2018.

16. The subsequent inspection and report concluded that the Fire Safety system needed improvement and recommended upgrading to an LD1 system which the Applicants understood would cost in the region of £50,000.00 – £55,000.00. The Respondent proposed that this would be part funded from the contingency fund held by the managing agent for the Tenants.

17. Mrs. Bevan went on to state that the Property was constructed in 1986. Since the date of construction, the Property had never had a fire system in place and neither had it ever had a door entry system. Mrs. Bevan informed the Tribunal that the Property was situated in an area with a low crime rate and the Property had never suffered from a break in or arson. She said the introduction of a fire safety system and door entry system were unnecessary.

18. The Applicant further submitted that the system proposed by the Respondent would effectively wipe out the contingency fund that existed at the development and expose the residents to further bills which they would struggle to pay. It was stated that the loss of the contingency fund together with high ongoing charges would affect the sale value of the properties on the development.

19. As regards the proposed fire safety system, the Applicant submitted that the Residents Association took the view that the latter report prepared in 2018 had adopted and applied the wrong guidance when reaching its conclusions. Indeed, it conflicted with the guidance used in the report prepared in 2016. The first report adopted guidance for "purpose - built housing "whilst the latter report adopted the guidance for "specialised housing ". It was submitted that the property was not specialised housing.

20. It was submitted that both reports were sent to Mr. Richard Davies, who was a fire officer with the Swansea Fire Service. His responses appear at pages 82 and 83 of the hearing bundle. The replies stated that the guidance for "specialised housing" as relied upon in the 2018 report had not been adopted in Wales whereas the guidance for use in "purpose built" buildings had been adopted. Therefore, there was no legal requirement to implement the system which had been suggested by the Respondent as being the reason for the introduction of the system.

## The Respondent's evidence

21. Mr. Simpson opened by submitting that this was not a case where a formal consultation was required as the work had not been carried out.

22. As regards the Applicants' position, Mr Simpson stated that the Applicant had not obtained a report from Mr Davies and accordingly the matter had not been properly considered.

23. He asserted that the Welsh standards in these matters were not lower than those which applied in England and he referred the Tribunal to page 588 of the bundle which was a letter from an individual called "Wayne Pringle" who was a fire officer with the Cambridgeshire Fire Service, which seemed to contradict the comments of Mr. Davies. It was submitted that the correct standard was the British Standard and this had equal application to both sets of guidance.

24. The Tribunal was informed that the recommendation for the implementation of the improved fire safety system had been generated by the events of the Grenfell fire.

25. He went on to inform the Tribunal that a second cheaper option had also been suggested which had cheaper up - front costs but would probably prove to be more expensive over time and referred the Tribunal to the report by AHR Building Consultancy dated March 2019 which appeared at pages 422 – 532 of the bundle.

26. It was submitted that the Applicant had not advanced any reasonable alternative report or proposals.

27. Mrs. Alwen then stated that after the first meeting with the residents she contacted Wayne Pringle at Cambridge Fire Service and arranged for a presentation at site by Alex Peck. She referred the Tribunal to the presentation at page 593 of the hearing bundle. Mrs Alwyn said that copies of the presentation were made available to those residents that were unable to attend the meeting. Following the meeting a ballot was taken of those present and 17 residents out of the 20 present at the meeting accepted that at least a minimum LD3 system was required at the property. This was a less comprehensive fire safety system but was recommended as the minimum system that should be adopted.

28. Mr. Simpson went on to state that whilst the system proposed was not a legal requirement it was best practice.

29. Mr. O Donnell stated that the Managing Agent charges a flat fee for its services and obtains no commercial or financial advantage in recommending unnecessary works. He stated that health and safety was a priority and they would refuse to manage developments which were unsafe.

30. As regards the door entry system, Mr Simpson submitted that the Property has no security provision in place at all. The proposal is not extensive: 4 blocks, 4 systems totalling circa £16,500.00

31. The Tribunal invited Mr Simpson to specify exactly which clauses in the lease he sought to rely upon as justification for both carrying out the work and re - charging the cost to the residents. He referred to clause 6 of the seventh schedule to the Lease. He submitted that the doors were part of the structure of the building as too was the fire alarm.

32. Mr. Simpson said that the Applicants had not raised this point in their claim and he had not brought along any authorities. Given the significance of this point the Tribunal directed that the Respondent submit written representations on this specific point by 4 pm on the 28th October 2019 with the Applicants' response to follow by 4 pm on the 12th November 2019.

33. The Tribunal asked for details of the ages of the residents at the Property. Neither party were able to answer that question. However, in its subsequent written representations the Respondent confirmed that there were 11 properties on the site that had at least one occupant over the age of 80.

34. The Tribunal questioned the Respondent as to the ongoing costs of the respective systems. The Respondent stated both systems have ongoing costs. The sim card operated system having ongoing costs of £1,000 pa and the hard - wired system having ongoing costs of £350 per annum.

## Cost of repairs – Issue number 2

## Applicants' evidence

35. Mrs Bevan informed the Tribunal that the Respondent had taken £27,000 from the reserve fund to cover the cost of damp repairs to several flats on the development. She stated that there had not been any consultation about this with the residents.

36. Mrs. Bevan then informed the Tribunal that the sum of £19,600 has subsequently been returned to the account which left a sum of £7,400 outstanding and Mrs Bevan wanted to know why this had not been returned.

## Respondent's evidence

37. Mr Simpson indicated that the history behind this issue had been set out in the witness statement of Mr. Humphreys. He indicated that it was incorrect to suggest that the residents had not been informed of the proposed works and he referred the Tribunal to page 635 of the bundle and the following pages which indicate that formal notice was given on the 30th July 2015.

38. He said that a decision was taken that First Port would return the sum of £19,600 to the contingency funds from its own resources which meant that the residents only made a payment of £7,400 towards the cost of treating the damage to several flats on the development.

39. Mrs. Alwyn then stated that at a budget meeting with some of the residents she had notified them that the sum of £19,600 had been returned to the contingency fund. The Tribunal was informed that the contingency fund currently held around £52,000.

40. The Tribunal asked if a scope of works had been prepared and Mr. Simpson referred the Tribunal to pages 647 – 648 of the bundle which contained a scope of works.

## Open View charges – Issue Number 3

## Applicants' evidence

41. Open View were the company which had been appointed by the Respondent to maintain the fire appliances and emergency lighting in the blocks.

42. Mrs. Bevan stated that the Respondent had failed to give a proper breakdown of the proposed charges by Open View in respect of these services and in any event the charges seemed too high at £1,055.31 per year.

43. She said that on the entire development there were only 5 fire extinguishers and emergency lighting in 4 blocks so she was struggling to see how Open View's charges could be justified.

## Respondent's evidence

44. The Respondent indicated that the figures provided for previous years at page 608 of the bundle did not show the full picture as other work had been done which did not appear in the bundle. The Tribunal asked if they could be provided with the other figures for the years 2015 to 2019 and the Respondent said that it would provide the details.

45. Mr. O Donnell stated that the contract with Open View had a service level agreement attached which means that there are now contractually agreed response times for repairs and the like. He said that this was not the case in earlier years.

## Lack of itemised accounts – Invoice for £692.40 – Issue number 4

## Applicant's evidence

46. This related to an invoice from S.T Holland Fire Protection UK Ltd in respect of repairs carried out to doors at the property.

47. Mrs Bevan stated that she wanted an explanation as to which part of the development had been subject to the work charged in the invoice. She also stated that the cost of the work seemed excessive.

## Respondent's evidence

48. Mr Simpson stated that the work was carried out following the fire assessment and he referred Mrs. Bevan to the invoice at page 706 of the bundle.

49. After a consideration of the invoice, Mrs. Bevan said that she no longer pursued her complaint as regards that particular aspect.

## Matters post hearing

50. Following the hearing the Tribunal received the written submissions of the Respondent dated the 25th October 2019 together with the Applicant's response dated the 11th November 2019.

51. In the written submissions made on behalf of the Respondent, Mr Simpson appears (at paragraph 2) to seek to revive the point that the application has been made against the wrong party. This issue was dealt with at the hearing and is addressed at paragraphs 12 and 13 of this decision.

## Deliberations – Fire Safety system and standalone door entry system

52. The Respondent submits at paragraphs 32 and 33 of the written submissions that the Tribunal does not have jurisdiction to deal with the Applicants challenge to the right of the Respondent to carry out the upgrade of the fire detection system and standalone door entry system as such a challenge did not form part of the Applicants case.

53. As to this latest submission, the Tribunal would firstly make the point that the Respondent was not given permission to make further submissions beyond those directed by the Tribunal on the 14th October 2019. The Tribunal gave a specific direction that further written submissions were to specifically address those parts of the lease upon which the Respondent sought to rely in asserting that the landlord was entitled to carry out the desired work and charge it to the tenants via the service charge. In those circumstances the Tribunal is not prepared to allow the Respondent to seek to go beyond that direction and make further submissions on matters which could and should have been made at the hearing.

54. In any event, and aside from the point made in the paragraph above, it was clear from the submissions made by Mrs. Bevan at the hearing that part of the complaints made by the Tenants was that the landlord did not have any authority under the terms of the lease to carry out the proposed works and to charge them to the tenants. In those circumstances the submission that the Tribunal does not have jurisdiction to consider the issue as to whether the landlord is entitled to charge for the work is rejected in any event.

55. The Respondent contends that the terms of the lease provide that the works can be undertaken by the Lessor and that the cost of the works can be charged to the tenants through the service charge account.

56. The Respondents submissions appear in the written submissions dated the 25th October 2019.

## The Lease

57. The Respondent provided a copy lease for flat number 17, dated the 7th August 1991. The Lease is for a term of 99 years. The Tribunal was informed that all of the terms of the Leases were expressed to be in identical terms.

58. The Respondent submits that it has an obligation to carry out the works in question under the terms of the lease and in that regard, it specifically relies upon clauses 6, 11,12(ii) and 12(iii) and 15 of the 7th Schedule to the lease. The relevant paragraphs are as follows –

**Paragraph 6**

"To maintain repair and where necessary renew:

i. The main structure of the buildings including the foundation and the roof;
ii. The boundary walls and fences of the Estate;
iii. All such service installations in under and upon the Estate as they are enjoyed or used by the Lessee in common with the other Lessee's of the other dwelling;
iv. The common parts;
v. The Access road, the parking spaces and the Forecourt."

**Paragraph 11**

"To employ engage or otherwise provide the services of a warden to reside in the Wardens dwelling (and to provide so far as practicable a relief warden service for periods when the Warden is not available) for the following purposes:

i. To be reasonably available to the occupiers of the dwelling to give assistance in case of emergency but not so as to give or provide any medical or nursing assistance;

ii To supervise the carrying out of matters covered by this schedule and where necessary to report as appropriate to the lessor its agents and the occupiers of the dwellings

iii Such other purposes as the Lessor may reasonably specify from time to time.

**Paragraph 12**

**"**To provide maintain and (if necessary) renew….

ii The Warden Service Alarm system provided in each of the dwellings;

iii the fire - fighting appliances, communal television aerials and entry phone system at the building…. “

**Paragraph 15**

“The Lessor may vary or omit any of the services or amenities mentioned in this schedule or otherwise afforded to the Lessee of the other dwellings with the consent of the majority of such Lessees and any expenditure so incurred by the Lessor shall be deemed to be part of the Maintenance expenses.”

**Applicants Obligations**

59. The Applicant’s obligation to pay the service charges arise from the following paragraphs –

**Paragraph 20, Part 1 of the 6th Schedule** to the Lease which states that the Applicant will “pay to the Lessor Service Charge and Interim Service Charge in accordance with the Ninth Schedule”.

**Paragraph 1 (1) of the Ninth Schedule** of the Lease which states that the Service Charge means “that proportion of the Maintenance expenses shown as the Service Charge Proportion in the Particulars.”

**Paragraph 1 of the Eighth Schedule** of the Lease which states that the Maintenance Expenses are “the costs and expenses incurred by the Lessor in carrying out its obligations set out in the Seventh Schedule.”

**Paragraph 3 of the Eighth Schedule** of the Lease state that “Maintenance Expenses“ include “ the cost of supplying providing hiring inspecting maintaining renewing or replacing repairing servicing and keeping in good and serviceable order, and condition, all appurtenances fixtures and fittings furnishings receptacles tools appliances materials systems equipment and other things in or on the reserved property or which the lessor may deem desirable or necessary for the maintenance appearance upkeep or cleanliness of the Estate. “

**Paragraph 11 of the Eighth Schedule** of the Lease states that the Maintenance Expenses also cover “All expenses (if any) incurred by the Lessor or its agents in or about the maintenance and proper and convenient management and running of the Estate including in particular any interest paid on money borrowed by the lessor to pay any expenses incurred by it.”

**Paragraph 16 of the Eighth Schedule** also states that “Maintenance Expenses” includes the “cost of taking all steps in complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations order bye laws made under them relating to the Estate or in respect of any servant employed by the Lessor in respect of the Estate.”

**Paragraph 17 of the Eighth Schedule** which states that Maintenance Expenses include "The provision inspection maintenance and renewal of any additional facilities or services or any alternative services for any of the matters referred to in the 7th Schedule to the Lease which in the opinion of the Lessor or its agents it is reasonable to provide or carry out for the good management of the Estate of for the benefit of the Lessees of the dwellings."

60. We shall address each of the Respondents submissions in turn.

61. The Tribunal does not accept that the proposed works fall within the Lessors obligations at Paragraphs 6 (i) and (iii) of the 7th Schedule to the Lease. It is not accepted that the works amount to repair or renewal of the main structure of the building or the service installations but in the Tribunal's view the works relate to something which would be completely new and which had never been at the Property previously.

62. The Warden Alarm System was not a fire alarm system in the commonly understood sense of the phrase. Whilst the system was for use in emergencies to notify the on - site warden it was not a fire alarm system per se. The Tribunal were informed that originally there were no fire alarm sensors in each of the dwellings and there were no fire alarm sensors in the communal areas. The only equipment provided by the lessor was the use of a fire extinguisher in each separate block and this was kept in the plant room on the ground floor.

63. The Tribunal have paid regard to the decisions in Minja Properties Ltd v Cussins Property group Plc (1998) 2 EGLR 52 and London Borough of Sutton and Drake & Ors (2007). We are of the view that what is proposed is sufficiently different as to create an entirely different thing. In the above cases the work in question was done as part of a much larger schedule of works and was a necessary part of those works which is not the same as in the present case.

64. Had the Tribunal found that the works were within the obligations imposed upon the lessor at paragraph 6 of the 7th Schedule to the lease, then the question of what would be current good practice would be a consideration. However, such considerations have no application as we have found that the proposed works do not form works of maintenance repair or renewal of either the main structure of the buildings or of the service installations. The case of The Anchor Trust v Corbett can be distinguished as in that case the Tribunal were dealing with issues relating to the upgrade of an existing fire alarm system. That is not the case here.

65. The Respondent contends that the current fire detection and alarm system forms part of the Landlord's structure. Firstly, the Tribunal heard evidence that the current warden alert system has not been in use for a number of years. Secondly, the "fire detection system" amounts to battery operated smoke alarms fitted to the ceiling of each individual dwelling. The Tribunal does not accept that this amounts to a sufficient degree of annexation to form part of the structure of the building.

66. Overall, the Tribunal finds that the Respondent's submissions as to the both the existence and use of the original alarm system to be exaggerated and reject this submission.

67. The next clause relied upon by the Respondent in its submission was paragraph 11 of schedule 7 to the Lease. The Tribunal cannot see that this clause assists the Respondent at all and find that this does not provide any justification for carrying out the works in question and then re charging the same to the tenants. Beyond passing reference in its written submissions, the Respondent makes no detailed submissions on this point at all.

68. The Respondent next relies upon paragraph 12 (ii) of the 7th Schedule to the Lease. The Respondent asserts that the proposed works amount to no more than maintenance or renewal of the warden alarm system. However, as stated above the Tribunal takes the view that the proposed work goes significantly further than that. The proposal envisages a system that benefits all areas of the property but that is not how the system originally operated. The original system benefited individual dwellings and not the blocks as a whole to include both individual dwellings and common parts. The Respondent again exaggerates the extent of the previous system.

69. Clause 12 (iii) of the 7th Schedule to the Lease obliges the Lessor to "provide, maintain and if necessary, renew……. The fire - fighting appliances, communal television and entry phone system at the building" In the Tribunal's view the interpretation of this clause lends itself to maintaining or renewing what was at the property at the date of the lease and not to replacing it with something that goes beyond what was present at the outset of the lease. Indeed, use of the word "appliances" tends to suggest that this is reference to the fire extinguishers present in the plant room of the property rather than the fire detection system proposed by the Respondent which would be to give the phrase a wider interpretation than its usual ordinary meaning would suggest.

70. Indeed, this view is reaffirmed by reference to paragraph 15 of the 7th Schedule which does allow the Lessor to "vary or omit any of the services or amenities mentioned in this schedule or otherwise afforded to the Lessee and the Lessees of the other dwellings with the consent of the majority of such Lessees and any expenditure so incurred shall be deemed to be part of the Maintenance Expenses." This envisages that services could be altered/ improved or extended subject to agreement.

71. The Respondent gave evidence that at a previous meeting a majority present had approved the new system. However, the Tribunal are not satisfied that the evidence presented is sufficient to amount to compliance with Paragraph 15 of Schedule 7 to the Lease.

72. Accordingly, for the reasons given the Tribunal does not accept the submission that Paragraph 12 (iii) provides justification for carrying out the proposed works.

73. The Respondent goes on to submit that Paragraph 15 of Schedule 7 to the Lease also justifies recharging the cost and the Respondent submits that this clause is

effectively a “sweeping up clause” and that the proposed works are justified as the clause states that “ any expenditure so incurred by the Landlord shall be deemed to be part of the Maintenance Expenses” .However, when quoting this part of Paragraph 15, the Respondent has omitted the words which precede those quoted namely, that such works require agreement of the majority of the Lessees. The Tribunal have found as a matter of fact that there was no agreement. Therefore, the Tribunal reject this submission.

74. The Respondent goes on to submit that Paragraph 16 of the 8th Schedule to the Lease expressly provides for the landlord to recover through the service charge the cost of “complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations order and bye laws made under them relating to the Estate or in respect of any servant employed by the Lessor in connection with the Estate except in so far as such compliance is the responsibility of the Lessee of any of the dwellings.”

75. It is now submitted that the Respondent is subject to the requirements of the Regulatory Reform (Fire Safety) Order 2005 (“the Order”) and in particular Paragraph 5 (2) of the Order imposes duties upon the Respondent to comply with the requirements of paragraphs 8 - 22 of the Order. In this regard the Respondent has changed its position from the submissions made at the hearing. At the hearing Mr Simpson stated that the Lessor was not under any legal obligation to carry out the works but rather the Lessor was adopting best practice. He now puts the position more forcefully and asserts that the Respondent has a legal duty to carry out the works recommended.

76. The Tribunal is satisfied that the Respondent is subject to the Order and the duties imposed thereunder. However, the duties imposed under the Order only extend to ensuring fire safety of the communal parts of the blocks and they do not extend to ensuring compliance by individual tenants in their own private dwellings (Clause 6.1 (a) of the Order which excludes domestic premises as defined in Clause 2 of the Order). Indeed, Tudor Court consists of both individual flats set in 4 separate blocks together with individual houses. The Requirements of the order specifically exclude private residential dwellings.

77. Therefore, it seems to the Tribunal that the proposed works go beyond what is legally required in that the proposed system requires installation in both the private dwelling of each tenant as well as in the communal areas of the blocks in which the flats are situated. In those circumstances it seems to the Tribunal that it cannot be said that the proposed works are necessary to comply with the Order. They go further than required under the Order.

78. That being the case the costs of the proposed works fall outside the scope of paragraph 16 of the 8th Schedule to the Lease which only allows recovery of those costs relating to the Estate “except in so far as such compliance is the responsibility of the lessee of any of the dwellings.”

79. The Tribunal can well understand why the Respondent seeks to have the works carried out as they followed the advice given by the duly appointed firm of fire consultants and as such no doubt represents good practice. However given the

facts of this particular situation the Tribunal has formed the view that the works which are proposed are not contractually imposed upon the Landlord and the wording of paragraph 16 of the 8th Schedule will not allow the costs of the proposed works to be re - charged to the Tenants via the service charge account as they go beyond what is required of the Respondent under the Order.

80. Accordingly, the Tribunal finds that the proposed works relating to the upgraded fire safety system are unreasonable and are not recoverable under the terms of the Lease.

81. Having reached that finding, the Tribunal would like all of the parties to take note that an alternative and less extensive fire detection system installed into the common areas of the blocks would likely be recoverable under the terms of the lease. In those circumstances we would urge the parties to engage with one another to give effect to such a system as safety is clearly a priority for everyone.

82. Although much time has been taken in addressing the issue of the fire safety system there is also the issue of the door entry system to consider. That is a much more straightforward issue. As submitted by the Respondent, Paragraph 12 of schedule 7 to the Lease provides that the Lessor must "provide maintain and (if necessary) renew…… (iii) the fire - fighting appliances, communal television aerials **and entry phone system at the buildings**."

83. Given that the obligation extends to "providing" a door entry system it is clear that as a matter of contract the Lessor is able to carry out the works and charge the same to the service charge account subject to issues of reasonableness.

## Reasonableness of the works

84. The Applicant maintains that the proposed works are neither necessary nor reasonable. As regards the fire Safety Issue they submit that it is not necessary and that the report upon which the Respondent relies as being the justification for the work is based upon the wrong guidance. As regards the door entry system they submit that it is not necessary.

## Issue number 1 – Fire safety system and door entry system

### Fire safety system

85. Given the findings of the Tribunal that the proposed works are not payable by the Applicants there is no need to consider this aspect any further.

### Door entry system

86. As regards the door entry system, the Applicants submitted that such a system was unnecessary. They stated that there had never been any problems historically and that the area was quiet and the risk of intruders was low. It was said that there had never been any incidents of arson at the site.

87. The Quantum Compliance report recommended at section 2 part 1 (ref: 1774028) that unrestricted access presented a risk of arson and unauthorised persons entering the building. It recommended additional locks to be installed on communal entrance doors to the blocks.

88. The Respondents response to that recommendation was to propose a door entry system that allowed visitors to buzz a particular property before being able to gain access to the block.

89. The Tribunal finds that some form of security is both necessary and reasonable and, in that regard, it accepts the findings of the Quantum compliance report. As regards the cost of the said works, in the absence of alternative proposals from the Applicants, the Tribunal finds the Respondents proposals as regard cost to be reasonable.

## Issue Number 2 – Damp works

90. The Second complaint raised by the Applicant is in respect of the costs of repair works carried out to flats numbered 6,7,21 and 23 totalling £27,372.00.

91. The terms of the application essentially challenge the removal of £27,372.00 from the contingency fund without consultation with the Lessees.

92. However, the Respondent subsequently returned the sum of £19,600.00 to the fund which left a sum of £7,772.00 spent on the works.

93. Given that the sum spread across 33 properties totals £235.51 there is no need for formal consultation.

94. The Tribunal considered the extent of the work carried out which appears from the documents starting at page 635 of the bundle and finishing at page 652 of the bundle.

95. From the extent of the work identified in the documents the Tribunal is satisfied that that work was both necessary and reasonable and the charge was properly incurred.

## Issue number 3 – Open View charges

96. The Applicants further challenge the reasonableness of the Open View contract charges for maintaining the fire and security systems at the property.

97. In the 3 years from 2015 to 2018 the charges were on average £428.33 per year. This figure has been calculated from the figures which are given as the actual expenditure for those years and which appears at page 608 of the bundle.

98. The sum payable to Open View for the year 1st April 2018 to the 1st April 2019 came to £1,055.31.

99. In its evidence the Respondent said that previous years charges had been ad hoc charges by different suppliers. However, the Open View contract came with a service level agreement.

100. The Respondent has provided no further evidence in support of this charge.

101. The Tribunal can see no reason why the charges for these elements should increase by a figure in excess of 50% of the costs incurred in the previous 3 years. It may be more convenient to have this type of contract in place but in the Tribunal's view that alone does not justify the increase.

102. In the circumstances, the Tribunal find that the charge is unreasonable and allow a figure of £428.33 being the average figure incurred in the earlier periods and which are included in the bundle.

## Issue Number 4 – Invoice £692.40

103. The Tribunal make no determination on this issue the complaint having been withdrawn by the Applicant at the hearing.

## Section 20 Application

104. The Applicant also seeks an order from the Tribunal pursuant to section 20C of Landlord and Tenant Act 1985.

105. The Application asked the Tribunal to determine four issues. Two of those Issues have been determined in the Applicants favour, one has been determined in the Respondents favour and one issue was withdrawn during the course of the Hearing.

106. In the circumstances, the Tribunal determine that the Respondent is entitled to recover 25% of its costs to reflect the fact that it was successful on one of four issues of which one issue was withdrawn without argument on the day of the hearing.

## Conclusion

107. The Tribunal determine that the proposed works to update the fire safety system are not recoverable under the terms of the Lease.

108. The Tribunal determine that the proposed works in respect of the door entry System are recoverable under the terms of the Lease. In addition the works are both necessary and the costs are reasonable.

109. The Open View charge for the year 2018 – 2019 is unreasonable and the Tribunal determine a reasonable to sum to be £428.33.

110. The section 20 C application has been partially successful in that the Respondent can only charge 25% of the costs of these proceedings to the service charge account.

Dated this 29th day of January 2020.

Andrew Grant
Legal Chairman