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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0016/07/21

In the matter of 14 Cae Gorlan Court, Abercarn, Caerphilly, NP11 4TH

And in the matter of an application under section 27A of the Landlord and Tenant Act 1985

Between

Applicant:	**Cae Gorlan Court Limited**
Respondent:	**Mr. C Evans**
Tribunal:	**Mr. A Grant (Chairman)** **Mr. M Taylor (Surveyor)** **Dr .A Ash (Lay member)**

Decision

The tribunal makes the following determination –

1. The service charge account for the year 2017 is reduced by £504;
2. The service charge account for the year 2018 is reduced by £600:
3. The service charge account for the year 2019 is reduced by £300;
4. The service charge account for the year 2020 is reduced by £396:
5. The Service charge account for the year 2021 is reduced by £300.
6. Demands numbered INV 5595, 6884, 7357 and 8138 are not properly payable until such time as they are amended to include the information required by section 48 of the Landlord and Tenant Act 1987 and served upon the Respondent.

Reasons

Introduction

1. This is an application by Cae Gorlan Limited ("The Applicant") which is the freehold owner of Cae Gorlan Court, Abercarn, Caerphilly, NP11 4TH ("the Development).

2. The Applicant seeks a determination as to the reasonableness of, and the liability to pay, service charges for the years 2016 – 2021 in respect of the development.

3. The development consists of two separate blocks, each of which contains eight flats. The development also consists of communal grounds and car parking.

4. The Respondent to the application is Mr. C Evans ("the Respondent").

5. The Respondent resides at flat fourteen, Cae Gorlan Court, Abercarn, Caerphilly, NP11 4TH. The Respondent occupies the Property pursuant to the terms of a lease dated the 14th February 2000 and made between Cae Gorlan Court Limited and John Henry Gibby and Pauline Joan Gibby ("the Lease"). The lease has a term of 999 years commencing on the 25th December 1989.

6. The Respondent challenges the application for a number of reasons and denies that any service charges are payable at all.

7. The Application is dated the 10th July 2021. The Tribunal Issued directions on the 20th July 2021. Both parties have complied with the directions.

8. Due to the current health crisis caused by Covid 19, the hearing took place remotely on the 21st October 2021. The Applicant was represented by it's managing agent, Ms. Burles Corbett. The Respondent attended in person.

The hearing

9. At the start of the hearing the Tribunal asked the Applicant to confirm the amount which they were seeking a determination upon. The Applicant indicated that they were seeking a determination upon the sums appearing at items 1 – 9 of the witness statement of Charlotte Burles Corbett dated the 26th August 2021. This sought a determination on sums totalling £3,740 covering a period from the 25th December 2016 and continuing until the 23rd June 2021.

10. At this point, the Respondent was invited by the Tribunal to give his submissions upon the application. The Respondent had a number of submissions to make.

11. The first submission that the Respondent made was that the lease provided for service charges to be calculated in a number of different ways depending upon the nature of the charge. Clause 1 (i) of the lease provides that the maintenance charge shall be "one sixteenth of the costs to the Lessor of carrying out its obligations under the seventh

Schedule of the lease together with a one eighth share of the Lessors obligations where the same shall relate specifically to the repair and maintenance of the block in which the Respondent's flat was situated." He said that the Applicant had not differentiated between charges to the entire estate and block specific charges and had simply applied a straight one sixteenth calculation across the board when he knew that there had been block specific work.

12. The Applicant responded that during the period under examination there had been no block specific charges, hence the one sixteenth apportionment had been entirely appropriate.

13. The Tribunal invited the Respondent to point to any evidence within the bundle to support his assertion that the Applicant's charging method had not followed the procedure set down in the lease. The Respondent identified several documents in the bundle which he said evidenced the fact that work had been paid and charged to the tenants which should not have been so charged. He referred to section B of the bundle which he had prepared and, in particular, page 9 which referred to new glazing and a new front door to number 15, page 10, which referred to work being undertaken to replace the seals to the kitchen window at flat 5, and page 13, which referred to work undertaken to replace the front door to flat 15.

14. The Applicant responded saying that there was agreement in place prior to their appointment that a reserve fund be created to fund the renewal of both doors and windows at the properties and that was why such work had been carried out and that it had been paid from the reserve fund.

15. The Tribunal invited the Respondent to show to the tribunal evidence of any work specifically carried out to the structure of the building which should have attracted a one eighth contribution. The Respondent referred the Tribunal to section 5.3.10 of the Applicant's bundle and in particular an invoice from Spring developments dated the 31st March 2021 in the sum of £2,100 for two Velux windows, C.W Trades frames dated the 17th August 2017 in the sum of £324.00, C.W Trade frames dated 17TH August 2017 in the sum of £180, C.W.Trade frames in the sum of £48 and a further invoice from C.W. Trade frames dated the 8th November 2018 in the sum of £750. The Respondent also said that he was aware that there had been work to the roof, the drains and electrical work but he was unable to locate the invoices and submitted that not all invoices had been disclosed.

16. The Applicant reiterated its position that during the period in question there had been no block specific works as alleged and confirmed that all invoices had been provided.

17. The Respondent repeated his submission that there had not been any true apportionment of costs in accordance with the terms of the lease.

18. The Respondent then submitted that the service charge demands did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987 in that the Applicant had not served demands which provided the correct details in that they had either named the wrong party as landlord and/ or provided an incorrect address for service.

19. The Applicant accepted that there had been some errors in that regard and that demands for 2015 and 2016 were not being pursued which is why the sum now sought was less than that indicated in the initial application to the Tribunal.

20. The Respondent further submitted that the lease had been varied such that the obligations to both carry out repairs and pay service charges had been removed or altered and the lease provisions could no longer be relied upon.

21. Finally, the Respondent stated that the development needed maintenance and was in a state of disrepair. In that regard, he took the tribunal to the report prepared by the Applicant which appeared at the end of the bundle.

22. The Applicant responded by acknowledging that work was required at the development and that they had advised accordingly. However, their instructions were to keep maintenance charges as low as possible and that inevitably meant that not all required works could be addressed.

23. The Respondent concluded by saying that he would gladly pay the service charges if they were properly audited and certified by a registered chartered accountant. However, at the moment, this was not the case. The Applicant's figures were inaccurate and had been improperly calculated.

24. The Applicant concluded by saying that they had made this application upon the advice of their solicitors as the Respondent had failed to communicate with them. It was acknowledged that work was required at the development however the managing agents were limited to the extent of their instructions. The Applicant stated that the Respondent had not made any payments since the 30th April 2014.

25. The Respondent then briefly came back on the issue of communication. He said that he had never ignored the issue and had always engaged and took the tribunal to various items of correspondence passing between him and the Applicant's solicitors.

Deliberations

26. The Respondent has made a number of submissions as to why the service charges are not properly payable. The tribunal shall deal with each in turn.

<u>Calculation of the service charge</u>

27. The Respondent's obligations to pay service charges arise from the covenants given by the Respondent at Clause 5 of the Sixth Schedule to the Lease. The covenant reads as follows " *The Lessee shall pay a fair proportion of the expenses of repairing the walls bounding the Premises as defined in the Third Schedule and shall pay a one eight share of the Lessors expenditure in repairing the main structure of the building unit of which the premises forms part including the roofs foundations and external parts thereof (but not the glass in the windows thereof) or the internal faces of external walls which said payment shall be payable by the Lessee to the Lessor in addition to the Maintenance Charge and shall be payable in the same manner as prescribed for the maintenance charge."*

28. Clause 1 (i) of the Lease states that "*the maintenance charge shall be one sixteenth part of the cost of the Lessor carrying out its obligations under the seventh schedule hereto and in particular clauses nine to thirteen inclusive of that schedule together with one eighth share of the Lessors obligations therein where the same shall relate specifically to the repair and maintenance of the building unit of which the maisonette forms part."*

29. Clause 19 of the Sixth Schedule states that " *the Lessee shall contribute and shall keep the Lessor indemnified in and against the Maintenance Charge in respect of all costs and expenses incurred by the Lessors in carrying out their obligations under and give effect to the provisions of the Seventh Schedule hereto including clauses ten to twelve inclusive of that Schedule and will in addition pay a one eight share of the Lessors costs in carrying out all repairs and maintenance and painting undertaken by the Lessors in respect of the structure including the main roof, walls and foundations of the building unit (being part of the Development) of which the flat hereby demised forms part."*

30. Clause 20 of the Sixth Schedule to the Lease states that "*The Lessee shall on the execution hereof on the twenty fifth day of December and twenty fourth day of June during the continuance of the demise pay to the lessors on account of the Lessees obligations under the last preceding paragraph an advance amounting to one half of the proportionate amount (as certified in accordance with clause eleven of the Seventh Schedule) due from or paid by the Lessee to the Lessor in the accounting period to which the most recent notice under clause of the Seventh Schedule relates".*

31. Clause 21 of the Sixth Schedule to the Lease states that " *the Lessee shall within 21 days after service by the Lessors on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with clause eleven of the Seventh Schedule) due from the Lessee to the Lessors pursuant to Clause eighteen of this schedule for the accounting period to which the payment relates pay to the Lessors or be entitled to receive from the Lessors the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessors pursuant to the last preceding clause during that period."*

32. During his submissions on contributions, the Respondent made two points: Firstly, he said that there had been improper calculations carried out and secondly, that he had been charged for matters which were more properly the responsibility of the Lessees themselves under the terms of the lease. In that regard, he specifically referenced glazing works and doors which, under the terms of the Lease were the responsibility of individual tenants.

33. When invited to take the tribunal to evidence that he had been charged for works that were block specific he was unable to do so. Although he said that building work, drainage work and electrical work had been undertaken he could not point to any evidence that such work had been charged. This was consistent with the Applicant's evidence which was that there had not been any block specific works carried out during the period in question. Accordingly, we find that there has been no error in the way the formula under the Lease has been applied.

34. However, there was evidence that the tenants had been charged for works to glazing and doors. The Applicant suggested that prior to their appointment as managing agents there was an agreement whereby the works to doors and windows could be charged to the reserve fund and form part of the maintenance charge. The Respondent disputed this and said that such works should not form part of the Maintenance charge. In the absence of any evidence of any agreement, the tribunal finds that there was no such agreement for work to glazing and doors of individual flats to be charged to the maintenance fund. Those costs should fall to the individual lessees.

35. Analysing the evidence produced by the Respondent (and referred to at paragraph 15 above) the sums charged for glazing work and doors to individual flats totals £600 in the period in question. This consists of the invoice from C.W Trade Frames dated the 7th August 2017 in the sum of £324.00, The invoice from C.W Trade Frames dated the 7th August 2017 in the sum of £180.00 and the invoice from C.W trade frames dated the 28th January 2020 in the sum of £96.00. The tribunal determines that those sums are not properly payable as they relate solely to glazing to individual properties and work to doors at individual properties and neither cost is properly chargeable to the Maintenance Charge. The invoice from Springfield Developments is allowed, as it is clear that the entire unit has been replaced and not just the glazing within the unit.

<u>S47 and 48 of the Landlord and Tenant Act 1987</u>

36. The Respondent contends that the service charge demands did not comply with the requirements of the above statutory provisions in that variously they named the wrong landlord or gave an incorrect address for service of notices.

37. The Applicant indicated that, to a point, this was correct in that an incorrect freeholder had been named hence they did not seek to recover the demands for the years 2015 and 2016.

38. However, subsequent demands, numbered INV 5349, INV 5595, INV 6884, INV 7357, INV 8138 were all incorrectly addressed to Cae Gorlan Court, Abercarn, NP11 4SE. The Respondent submitted that there was no such postal address. This would seem to be correct as the only postal addresses are for the individual flats numbered 1 – 16 and there is no separate postal address known simply as "Cae Gorlan Court". The tribunal also notes that the address given on all subsequent demands was altered to refer to the address for service as being 19 Bridge Street, Abercarn, Gwent, NP11 4SE.

39. Accordingly, the tribunal finds that the demands did not contain the correct postal address and are not valid. The demands need to be altered to include the correct information and can then be re-served (taking into account the effects of this decision). The remaining notices contain the correct information and are compliant with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 although the effects of this decision must be taken into account.

Variation of leases

40. This submission by the Respondent appeared with some force in his statement but was not made as forcefully in his oral submissions to the tribunal. He was saying that there had been an agreement that the service charge provisions in the lease had been removed by agreement and could now no longer be relied upon by the Applicant.

41. The tribunal can deal with this point swiftly. The tribunal finds that there is no evidence to support such an assertion. The documents show nothing more than discussions as to changes that could be made to the management of the development, but those documents (minutes from an AGM) do not amount to evidence of any enforceable agreement to vary the terms of the Lease.

42. The Respondent further submitted that the Applicant had varied the lease to limit its own repairing responsibilities under the provisions of the lease. Again, the tribunal finds no such evidence to support such an assertion.

Failure to keep proper books and accounts

43. It was submitted that the Applicant had failed to keep proper books and accounts. It was stated that the Applicant had not given full disclosure of all relevant invoices for the period and that accounts had not been prepared in accordance with the terms of the lease, namely Clause 10 of the Seventh Schedule which required accounts to be made up to the thirtieth of January in each year.

44. The Applicant denied that documents had been omitted and stated that everything had been included. The tribunal accepts the Applicant's evidence on this point. There were a

substantial number of invoices before the tribunal and in the absence of specific evidence of missing invoices the tribunal prefers the Applicant's evidence.

45. Whilst it was seen from the evidence from previous tribunal proceedings that the parties had prepared accounts made up to January 31st each year, the Lease stipulated that accounts were to be made up to the 30th January each year and the tribunal determine that the Applicant was entitled to revert to compliance with the terms of the Lease. There is certainly no prejudice to the Respondent in so doing.

46. The Respondent also stated that he would pay the charges if they were audited and certified by a chartered accountant. However, the lease does not impose such a requirement upon the Lessor. The certification requirements are set out at Clause 11 of the Seventh Schedule and read "*The Account taken in pursuance of the last preceding paragraph shall be prepared by the Company or the Residents Association who will certify the total amount of the said costs and expenses for the period to which the Account relates and the proportionate amount due from the lessee to the Lessors pursuant to Clause eighteen of the Sixth Schedule."* Accordingly, the Applicant is not required to have the service charge accounts audited by a registered chartered accountant.

47. The Respondent also made a submission that the Applicant had not arranged for the Development to be insured so he had been forced to arrange his own insurance. This was denied by the Applicant which confirmed that insurance was in place.

48. Both parties were subsequently directed to file with the tribunal evidence of insurance. It is clear from the documents subsequently lodged that the Applicant had arranged insurance and that a valid contract of insurance was in place for the current year.

<u>Final matter – Legal costs</u>

49. The tribunal asked whether the Applicant sought to recover legal charges from the Lessees. The Applicant stated that they did not seek to recover legal charges. However, the tribunal pointed out the reference to legal fees which were to be found in the accounts. The Applicant said that the accurate position was set out in the budgets and not the accounts. However, the budgets also referred to legal fees being charged to lessees and in the hearing bundle were a number of invoices from a firm of solicitors called Clarke Wilmot. At this point, the Applicant then stated that the invoices related to costs incurred in pursuing the Respondent. In the period under examination the legal costs came to £1,500.00.

50. The tribunal found the Applicant's evidence on this point confused and unconvincing. It has clearly included legal fees within the service charge demands. However, the lease contains no provision enabling the Lessor to pass on the legal costs and charges to the

lessees. Accordingly, the tribunal finds that the legal charges totalling £1,500 are not properly payable by the Respondent.

Conclusion

51. The tribunal has determined that the service charge demands INV5595, INV6884, INV7537 and INV8138 are not payable in that they fail to provide the Respondent with a valid postal address for service as required by section 48 of the Landlord and Tenant Act 1987. The demands must be amended to include the correct information and then served upon the Respondent with regard paid to the content of this decision.

52. Works to windows and doors totalling £600 are not properly chargeable under the terms of the lease.

53. Legal costs charged in the sum of £1,500 are not properly chargeable under the terms of the Lease.

54. Accordingly, the service charge for the year 2017 must be reduced by the sum of £504 (being £324 plus £180 as per paragraph 35 above).

55. The service charge for the year 2018 must be reduced by the sum of £600 (as per paragraph 49 above).

56. The service charge for the year 2019 must be reduced by £300 (legal costs) (as per paragraph 49 above).

57. The service charge for the year 2020 must be reduced by £396 (consisting of £96 per paragraph 35 and £300 in respect of legal costs as per paragraph 49 above).

58. The Service charge for the year 2021 must be reduced by the sum of £300 in respect of legal costs which are not recoverable under the terms of the lease (as per paragraph 49 above).

59. Given the findings reached by the Tribunal, it further determines that there should be no order for costs.

Dated this 3rd day of November 2021

A Grant
Chairman