

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL
[Section 20C, 19 & 27A Landlord and Tenant Act 1985 the “Act”]

Reference: LVT/0008/06/20

Property: Joyce Close, Gaer, Newport, NP20 3JD

Applicants: Mrs Christine Davies - No 2
(Tenants) Mr John Hughes - No 11
Ms June Paginton - No. 14
Mr Frederick Paginton – No. 14
Ms Victoria Collier - No. 20
Ms Adrienne Murphy - No. 23
Mr Paul Tinkler - No.26
Rev. Jennifer Mole - No. 28 (Representative)
Mrs Jane Bland - No. 30
Mrs Jean Tinkler - No. 31
Mr William Bedborough - No. 33
Mr Ray Jones - Nos 41 - 47
Ms Yvonne Christensen No. 48
Mrs Glenys Ray - No. 53

Respondent: Newport City Homes Housing Association Limited [NCH]
(Landlord)

Tribunal: Chairman Dr J Rostron FRTPI FRICS Solicitor
Surveyor A M Lewis FRICS
Lay Member Dr A Ash

BACKGROUND

1. At a hearing on the 24 November 2020 and subsequent inspection on 15 December 2020 the Tribunal issued the following order dated 15 April 2021:

"The Landlord's dispensation sought from compliance with section 20ZA of the Act is granted subject to the following conditions:

- The 12.5% claimed as overhead costs is reduced to 5%.
- The proposed improvement to insulate the main concrete soffit areas is disallowed.

The Tenants' application for determination under section 27A of the Act is stayed until service charge demands are served.

No order is made under section 20C of the Act following Landlord's agreement".

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

INTRODUCTION

2. The outstanding matter of the Tenants' application under section 27A of the Act dated 15 June 2020 for the service charge years 2020/2021 is now being considered by this Tribunal following directions dated 8 October 2021, the salient features of which were:
 - 2.1 Applicants and Respondent to complete a Scott Schedule to identify the matters in dispute and make appropriate comments.
 - 2.2 Applicants and Respondent to provide for the hearing: - the application, directions, completed schedule, Applicants' statement(s), Respondent's statement(s), invoices, accounts, signed witness statements, expert's report, lease, quotations for alternative estimates, and consultation notices.
3. The Tribunal was convened by virtual hearing on 9 March 2022 to consider the service charge demands of the Respondent for the service charge year 2020/2021 which had been served on the Applicants.

THE LAW

4. Section 27(A) of the Act provides that: -
 1. An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to: -
 - a. the person to whom it is payable
 - b. the person by whom it is payable
 - c. the amount which is payable
 - d. the date at or by which it is payable
 - e. the manner in which it is payable
 - (2) Sub-section 1 applies whether or not any payment has been made.
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 18(1) of the Act states that "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and: -
- (b) the whole or part of which varies or may vary according to the relevant costs".

Section 19(1) of the Act provides that "relevant costs shall be taken into account in determining the amount of a service charge payable for a period: -

- (a) only to the extent that they are reasonably incurred; and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly".

WRITTEN SUBMISSIONS

5. The Applicants' statement of case is principally contained in a document which is the minutes of a meeting of some leaseholders held on 31 October 2021 and comments made in the Scott Schedule. The Applicants' statement in summary said;- that the costs are very high and came as a shock; the Leasehold Property Enquiry forms issued by the Respondent grossly underestimates the costs; they are willing to pay £3000; and that the Lease agreements state Leaseholders are required to contribute towards the costs of works but they feel they are not being asked to contribute towards the costs of the works but reimburse the money which NCH is paying the contractor and that the Respondent should contribute towards the costs themselves.
6. The Applicants have further summarised their concerns in a statement attached to the document mentioned in paragraph 5 above. These are that, they approached several contractors for alternative quotes but had been refused when informed of the purpose and name of the landlord; that the tenants are generally not well paid and will have difficulty paying the service charge levied; that level of service charge will have a detrimental effect on the sale of their properties; that the recent gesture of the Respondent to waive the costs of cleaning and minor works should have been raised in previous correspondence.
7. The Applicants' submitted a supplementary statement dated 21 January 2022, that said their case is about the costs of capital works and not other annual charges.
8. Following the hearing an email was received by the Tribunal dated 9 March 2022 from Mr. William Bedborough on behalf of Rev. Jennifer Mole. It stated that whilst the Applicants thanked the Tribunal for reducing costs in the first instance, they had three questions. Firstly. The Applicants asked if "it was the Tribunal's conclusion that the costs are appropriate", and if there was "any mileage in raising the issue with the Housing [sic]. Ombudsman". Secondly, the email stated that "...the leaseholders...still believe the NCH [Respondent] have at best [sic] misleading but in all truth incompetent in their approach to this matter...". Thirdly, the Applicants vigorously

disputed the costs. The submission was shared with the Respondent who made no comments in response.

9. A further submission dated 16 March 2022 was received from the Applicants' representative Rev. Jennifer Mole. The submission in summary expresses continued disappointment at the level of costs involved in repairing the roof compared to the much lower anticipated future costs provided by the Respondent in their Leasehold Property Enquiry forms. It also raises the matter of the letter from the Public Services Ombudsman for Wales to Ms Adrienne Murphy which advised them to apply to the Residential Property Tribunal and mediation via Lease. The submission emphasises the Applicants' confusion regarding the processes involved. This submission was shared with the Respondent who made no comment.
10. The Respondent's written submission is contained in a document dated 6 January 2022 prepared by Siân Jones of Blake Morgan LLP solicitors for the Respondent. The Respondent issued service charge demands for the year 2020/2021 dated either 29 or 30 September 2021 and included charges for:
 - a. Management Fee.
 - b. Building Insurance.
 - c. Capital Works.
 - d. Energy.
11. The capital works relate to the replacement roof and take account of the Tribunal's order mentioned above in that, costs for the insulation of the soffits were not included, and the management fee for the capital works was limited to 5%. The final costs of the capital works were as follows:

Block with 12 flats, estimate £14,476.40. Actual costs £12,424.81.

Block with 18 flats, estimate £13,580.81. Actual costs £11,618.10.
12. The Respondent states that the Applicants have not challenged the charges in relation to the Management Fee, the Building Insurance or the Energy Costs.
13. The Respondent has waived the costs of communal cleaning costs or for minor repairs for the service charge year 2020/2021.
14. The leases are in the same form and for a block of 12 service charges are levied at 1/12 and for a block of 18 service charges are levied at 1/18. Using Number 28 Joyce Close as an example lease, it states at clause 1(a) is subject to the Leaseholder paying:

"...the Rent of Ten Pounds in advance... and also paying by way of additional rent from time to time a sum or sums of money equal to 1/18th part of the amount which the Council may expend in effecting or maintaining the Insurance of the building of which the flat forms part..."

15. Clause 4 of the lease provides: -

"the Tenant hereby covenants with the Council and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Building that the Tenant will at all times hereafter during the said term:

(1)

(2) Contribute and pay annually one eighteenth part towards the costs expenses outgoings and matters mentioned in the Fifth Schedule hereto".

16. The Fifth Schedule states: -

"All costs and expenses incurred by the Council for the purposes of complying or in connection with the fulfilment of its obligations under subclauses (4) (5) and (6) of clause 5 of the Lease: -

Clause 5 of the Lease states: -

(4) That (subject to contributions and payment as here before provided) the Council will maintain and keep in good and substantial repair and condition: -

(1) the main structure of the Building including the foundations and the roofs thereof with the gutters and rain water pipes,

(5) That (subject to aforesaid) the Council will so far as is practicable keep clean and reasonably lighted the passages landings staircases and other parts of the Building so enjoyed or used by the Tenant in control aforesaid".

17. The Respondent is the successor in title to the Council.

18. The Respondent's case is that: -

a. The Building Insurance is payable as a result of clause 1 of the lease.

b. The Energy Costs are payable under the clause 4 as they fall within sub-clause (5)(5) of the Lease.

c. The Management Costs are payable under clause 4 as the indirect costs of providing the management of the blocks as provided by section 18(3) of the Act.

19. The Respondent states there is no challenge to the reasonableness of these costs mentioned in paragraph 18 and they are therefore not matters upon which the Tribunal is required to make a ruling. The Respondent further states that the only matter in dispute is the capital works cost of the roof which were considered in the Tribunal's decision of 15 April 2021.

20. The Scott Schedule identified three areas of concern; firstly, the discrepancy between the estimated and actual costs of service charges recorded in two Leasehold Property Enquiry forms provided by the two leaseholders who bought their flats in 2013/14 and 2018/19; secondly, the discrepancy between capital works costs carried out on comparable buildings; and, thirdly, the amount which leaseholders would be prepared to pay. In regard to the first matter the Respondent says the forms relate only to two

flats for the years 2013 and 2019. Concerning the second matter, the Respondent says that the works are not comparable, as they were undertaken in 2016/2017. Regarding the third matter, the amount proposed is well below that claimed by the Respondent, and is not justified by evidence adduced by the Applicants.

HEARING AND ANALYSIS

21. Because some of the Applicants were not present at the Tribunal's previous hearing regarding dispensation they may benefit from a brief description of the process. On 24 November 2020 a hearing was held to consider whether dispensation should be granted regarding administrative matters concerning the consultation requirements landlords have to undertake regarding capital works. It is important that members of the public not familiar with legal processes understand that the previous hearing which dealt with the granting of dispensations is distinct from the current hearing which is to determine if the service charges, which include capital costs and recurring annual charges, are reasonably incurred and priced. In this regard the Tribunal does not have jurisdiction to consider the personal financial circumstances of tenants. It does however have the ability in certain circumstances to determine how and when service charges are paid. At the current hearing the Respondent suggested that the high capital costs could be paid at the rate of £50 per calendar month. Because this would help reduce financial hardship to some Applicants, the Tribunal agreed to the proposal.
22. The Tribunal is conscious that the Applicants were not professionally represented and hopes the following further explanation of the processes involved may be helpful. The first hearing of the Tribunal in 2021 was to deal with dispensation from the consultation regulations. As part of this process the Tribunal considered the technical and financial evidence before it. The financial information before the Tribunal comprised estimates not final costs, which had to be formally served subsequently by the Respondent when the works were completed. Once the Respondent had appropriately served the final costs the Tribunal holds a further hearing to review them. The Applicants did not provide any alternative costs in sufficient detail or relevance which the Tribunal felt was compelling enough to challenge the detailed evidence provided by the Respondent. The Tribunal noted the content of the two Leasehold Property Enquiry forms, and is aware that one of these, completed in 2019 [six months before the works started] could be construed by Applicants as misleading, however, the Leasehold Valuation Tribunal does not have jurisdiction to deal with this issue. The Tribunal noted that the letter from the Public Services Ombudsman for Wales to the leaseholder explained that the Ombudsman cannot intervene in contractual issues and that it is the function of the courts to make determinations on legal issues, such as any liability on the part of the landlord for alleged misleading statements. This Tribunal cannot give legal advice and its jurisdiction is separate from the courts as the Ombudsman has explained.
23. The hearing was held virtually commencing at 10.00am on 9 March 2022. Those attending for the Applicants were; - Adrienne Murphy, Victoria Collier, William

Bedborough, Paul Tinkler, Rev. Jennifer Mole, Jane Bland, John Hughes, Judy Hughes, Frederick Paginton and Christine Davies. It was agreed that Rev. Jennifer Mole would represent the Applicants. Those attending on behalf of the Respondents were; Vanessa Duggan [Homes and Income Officer], Shaun Clarke [Senior Project Surveyor]. Siân Jones [Partner] of Blake Morgan solicitors representing the Respondent.

24. The Rev. Jennifer Mole said that the evidence mentioned in their statement of case was complete and no further supplementary evidence would be made, save for three matters: - Firstly, the service charge bills requiring monthly payments of £1035.40 for tenants of flats in the block of 12 units and £965.91p for tenants of flats in the block of 18 were too high. Secondly, that tenants would be prepared to pay a total of £3000 each towards the capital costs of reroofing. Thirdly, that the Leasehold Property Enquiry forms completed for two leaseholders prior to purchase provided by the Respondent contained inaccurate estimates of the future costs of works and this had encouraged people to purchase the flats based on misleading information resulting in financial hardship. Fourthly, that following complaint to the Public Services Ombudsman for Wales, tenants were advised that a remedy may lie with a Leasehold Valuation Tribunal or Court. The Tribunal noted that whilst the Applicants were represented by Rev. Jennifer Mole several other tenants spoke in support of, and confirmed, the comments she made.
25. The Respondent's solicitor Siân Jones agreed that their statement of case was complete and they had no further supplementary evidence to present. However, in terms of the clear problem which many tenants are likely to have in settling the large sums mentioned in the service charge bills the Respondent had offered to negotiate with tenants on how the bill could be settled without causing hardship. The Respondent's representative Siân Jones explained that some tenants, including those who have sub-let their flat have already come to an agreement on the manner and date/s of payment.
26. During the hearing the Respondent proposed to allow those Applicants, who chose to, to pay £50 per month for a maximum of twenty years until the capital works payment had been redeemed without any interest being levied. This was on the condition that if a tenant sold their flat before the outstanding amount was paid, the balance would be settled on completion. In the event of default following sale the Respondent would have liberty to consider claiming statutory interest on the outstanding judgement debt. The Respondent's solicitor confirmed their proposal in writing after the hearing.
27. Following a detailed examination of the financial information provided by the Respondent concerning the estimated capital costs of reroofing the roofs, coupled with a site inspection of the works by the Tribunal's surveyor after the hearing on 24 November 2020, the Tribunal considered that the recent final costs incurred were reasonable and pleased to note that they were reduced from the estimated costs. It is perhaps important to note that during the inspection the surveyor was able to evaluate the technical appropriateness of the works carried out. The Respondent provided detailed financial documentation relating to the final costs of the works. No detailed compelling counter evidence was presented by the Applicants.

28. The Applicants did not challenge the other aspects of the service charge bill and as such the Tribunal accepted the reasonableness of the items mentioned in it. The Tribunal, whilst satisfied of the reasonableness of the amounts, was critical of the detail provided in the documentation served on each tenant. There was a lack of invoices and details of how the management fee was calculated.
29. The Tribunal noted the proposal of the Respondent to allow Applicants to spread the payment of the capital works costs over several years which would alleviate financial hardship to the tenants.
30. The Tribunal considered the letter from the Public Services Ombudsman for Wales dated 4 June 2020 addressed to Ms Adrienne Murphy concerning her allegedly misleading Leasehold Property Enquiry forms. The letter does not suggest that the Tribunal deals with Leasehold Property Enquiry – only that its jurisdiction is to assess liability to pay and/or reasonableness of service charges.

DECISION

31. **The Tribunal decided that the service charge amounts for the year 2020/2021 are reasonable at the following rates:**

For each flat in a block of 12 capital works £12,424.81.

For each flat in a block of 18 capital works £11,618.10.

Management fee £185.18

Building insurance £36.52

Ground rent £10.00

Energy £28.61

32. **Under section 27A (1) (d) and (e) of the Act, the Applicants are at liberty to pay a minimum £50 per calendar month as their contribution to the capital works commencing from the date of receipt of this decision until the payment has been redeemed without any interest being levied. If an Applicant sells their flat before paying the amount specified in paragraph 31, on completion of the sale the outstanding balance would become payable. In default the Respondent is at liberty to claim interest under the statutory provisions regarding enforcement of judgement debt.**

Dated this 25th day of May 2022

J Rostron
Chairman

