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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0035/12/21

In the Matter of The Woodlands Chalet Owners Association

In the matter of an application for permission for leave to appeal to the Upper Tribunal.

Applicants/Respondents to appeal:
1) The Woodlands Chalet Owners Association
(2) Colin and Joanne Marsh
(2) Mrs J Lane
(4) Mr G Morris
(5) Mr and Mrs E Coles
(6) Mr M Simcoe and Mr M Tew
(7) Mrs C Miles, Mrs B Morgan and Mrs M Allison.

Respondent/Appellant: Multispan (Cardiff) Limited

Tribunal:

Tribunal Judge Richard Payne	Legal Member
Mr Hefin Lewis FRICS	Surveyor member
Mrs Juliet Playfair	Lay Member

DECISION

The application for permission to appeal is refused.

Reasons

1. By Form LVT 16 dated 30th January 2023 the Respondent, through its solicitors seeks permission to appeal against the decision of the tribunal dated 11th January 2023. The application contains a Grounds of Appeal document, ("the Grounds"), which seeks permission to appeal to the Upper Tribunal on three separate grounds which will be dealt with in turn below. The application for permission to appeal was made in time in accordance with regulation 20 of the Leasehold Valuation Tribunals (Procedure)(Wales) Regulations 2004. (The terms Applicant and Respondent in accordance with the original application will be used in this decision for the purposes of clarity.)

2. Permission to appeal will be granted if it appears to the tribunal that there are reasonable grounds for concluding that the LVT may have been wrong for one of the following reasons;

    a. That the decision shows that the LVT wrongly interpreted or wrongly applied the relevant law.

    b. That the decision shows that the LVT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.

    c. That the LVT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect or

    d. The point or points at issue is or are of potentially wide implication.

3. Unless the application for permission specifies otherwise, the application will be treated as an application for an appeal by way of review.

The Respondent's Grounds of appeal.

Ground One-The Tribunal's construction of clause 3(ii) and clause 2(3) in the Lease is the wrong construction and the Tribunal failed to apply relevant legal principles.

4. The Grounds argue that the original lease made inadequate provision for services and service charges so that they were varied by the 1985 deed. Clause 3(ii) of the 1985 deed states: "*T**he Landlord hereby covenants to use its best endeavours to make repair re-build maintain and cleanse the common parts of The Woodlands estate** including drains.....pathways pavements fences watercourses..... **and to maintain the grassed areas and to maintain the services of a Site Warden and workmen to supervise and maintain the estate..."* (Emphasis added by Counsel for the Respondent).

5. The Grounds recite that the tribunal found at paragraph 46 that service charges are only recoverable if they "relate to the costs of maintaining and so forth the common parts of the estate." The Respondent argues that this is the wrong construction of the wording of the lease because there are two elements to the services provided by the landlord which are the landlord's obligations to maintain and cleanse the common parts of the estate and secondly the obligation to maintain the services of a site warden and workmen to supervise and maintain the Woodlands estate as a whole. The Respondent further argues that the tribunal has failed to consider the overall purpose of the clause and the lease, and the facts and circumstances known or assumed by the parties at the time that the document was executed as per Arnold v Britton ([2015] UKSC 36). The Respondent contends that in particular the tribunal failed to consider the existence of a Site Warden in 1985 and the purpose of the Site Warden Role.

6. In fact, the Grounds' statement about paragraph 46 of the original decision is incorrect. Paragraph 46 in its entirety says

> "*The tribunal accept and agree with Mr Mynott's submission that the costs comprising the service charge, a proportion of which is payable by a tenant, relate to the costs of maintaining and so forth the* ***common parts*** *of the estate. The tribunal also find that whether styled as salaries or site warden and site management costs, such expenditure as is set out in the Respondent's statements of site expenditure [35,36] and Service Charge Statement [38] does not in practice relate solely to meeting the Landlord's covenants in relation to the common parts of the estate but also includes significant expenses in providing services to individual chalets which are not properly chargeable to the service charge. It appears to the tribunal, upon the evidence, that the services provided by Mrs Conn and Mr Mabbitt are of a high standard and are of considerable use to chalet owners, occupiers, and their guests."*

7. As can be seen from the full paragraph 46, the tribunal clearly noted and expressly referred to the site warden and site management costs, referring to the Respondent's own evidence and drawing a distinction between meeting the landlord's covenants in relation to the common parts, and the services to individual chalets. Further Paragraph 48 of the decision cites the evidence of the Respondent's main witness Mrs Conn that around 50% of the services provided and costs incurred are for what they called site warden services or duties. The tribunal has clearly considered and recorded at various parts in the decision, the site warden role and accepted that costs have been incurred on what Mrs Conn described as site warden services or duties.

8. Permission on this ground is refused, the tribunal's construction of the clause is not wrong, and the tribunal has not failed to apply the relevant legal principles. The tribunal was tasked with determining the service charges under the Landlord and Tenant Act 1985 which it has done.

Ground Two- the Tribunal failed to take into account relevant considerations and evidence when determining the existence and scope of the role of Site Warden.

9. The Respondent argues that the Applicants had asked the Tribunal to make a finding that the Site Warden role had ceased to exist due to estoppel by convention and that whilst it was not disputed that a Site Warden role had existed, the issue was whether it continued to exist. The Respondent's grounds say that "the tribunal did not determine the existence or extent of the role of the Site Warden because "*there is clear authority in the lease for leaseholders to pay the service charge for their proportionate part of the expenses and outgoings incurred by the Landlord in undertaking its covenants in relation to the common parts of the estate.*"(**[49]**)"

10. The tribunal's task was to determine the reasonableness and payability of service charges. That the Applicants had sought a finding on the Site Warden role did not mean that the tribunal was duty bound to consider this and rule definitively where it was not necessary to do so to determine the service charges application, as the

tribunal made clear. Again, the Respondent's application for permission to appeal selectively quotes from paragraph 49 of the tribunal's decision. What paragraph 49 says in full is;

> "*Whilst there has been much argument about whether or not the services are being provided as site wardens or not, the tribunal does not consider that it is required to make a definitive ruling upon this point, because,* ***as Ms Cunningham submitted,*** *there is clear authority in the lease for leaseholders to pay the service charge for their proportionate part of the expenses and outgoings incurred by the Landlord in undertaking its covenants in relation to the common parts of the estate." [*Our emphasis].

11. The Grounds submit (at paragraph 3.3) that "*By conflating the role of Site Warden with the Landlord's covenants to maintain and cleanse the common parts, the Tribunal has effectively removed the Site Warden role from the Lease without a proper legal basis for doing so and not in accordance with either party*." Such a submission is misplaced and is strongly rejected. The tribunal did no such thing. In fact, the Tribunal's decision frequently mentions the site warden role and accepted the evidence of Mrs Conn about site warden services. For example, at paragraph 54, where the tribunal notes that there "*are no comprehensive records detailing the way in which the site management fees/site warden duty fees have been calculated..."*. At paragraph 55 the Tribunal note "*The effect of Mrs Conn's oral evidence was to concede that 50% of the site management fees could relate to matters other than the common parts"*. At paragraph 57 "*the tribunal notes the large number of tasks undertaken by Mr Mabbitt and Mrs Conn that are summarised in Mrs Conn's witness statement at paragraphs 18-21 …..but also notes from the totality of the evidence that a large part of the site management/warden costs do not relate to the common parts and relate to individual chalets."* At paragraph 60 the tribunal notes "*The Respondent is entitled to charge individual chalets and their owners/occupiers for the personal site warden type services (that do not relate to the common parts) and it is a matter for them whether and if they choose to do so to recoup any shortfall."* The tribunal's analysis of costs appended to the decision specifically refers to costs of services provided by the 'Site Warden'.

12. It is clear from the evidence and the tribunal's decision that it is in fact the Respondent, in the form of Mrs Conn and Mr Mabbitt, who have conflated the Site Warden with the Landlord's covenant to maintain and cleanse the common parts (not the tribunal), as evidenced by Mrs Conn's admission that she does not keep accurate records of the work undertaken on site and whether it relates to the common parts or to services for individual chalets.

13. In the light of the foregoing and the frequent reference to the site warden type services in the decision, and the specific allowance for site warden costs in the analysis of costs, the ground is unsustainable, and permission is refused.

Ground Three- the calculations made by the tribunal are contrary to its own findings of fact and failed to take into account relevant considerations and evidence.

14. The Respondent refers to quotations that both parties provided for gardening services and says that neither party had provided quotes for site maintenance and that at paragraph 52 of the decision the tribunal states that "both the Applicant and the Respondent provided their own quotations that they considered were reasonable for site maintenance services", and that the tribunal then used the average of the gardening quotes to calculate the cost of site maintenance for the estate.

15. In fact, the tribunal at paragraph 56 of the decision referred to the quotes from Brookes and Bevan and accepted that the quotes related largely to the grounds and site maintenance but that there would be other elements other than the matters set out in the quotes that would be relevant to the common parts that were properly incurred as service charges. The tribunal noted that the Respondent's difficulty was that because of their lack of accurate records as to how costs had been incurred, that it was not possible to provide a precise breakdown and that Mrs Conn agreed with this. The decision therefore makes clear that the tribunal was required to exercise its judgment. Further, in the "Analysis of Costs" appended to the decision, note 1 explained that (as per paragraph 52 of the decision) adjustments would be made to reflect additional costs and overheads of the external companies to provide 'like for like' quotations.

16. At paragraph 4.3 of the grounds, the Respondent says that the tribunal "*made a finding that the cost of the Site Warden should only be recoverable for services relating to the common parts. The Tribunal found that 50% of Site Warden services do not relate to the common parts and are not recoverable ([48]). However, in the final calculation the recoverable Site Warden services are reduced from 50% to 25% for 2018/19 and 2019/20 and 15% for 2020/21, without explanation and contrary to the Tribunal's own findings."*

17. The Respondent appears to have misunderstood the basis of the calculation and the decision. At paragraph 48 of the decision, the tribunal records that it agrees with Mrs Conn's evidence that 50% of the services are for what they call site warden services or duties. Paragraph 55 of the decision says that "*The effect of Mrs Conn's oral evidence was to concede that 50% of the site management fees could relate to matters other than the common parts."*

18. However, the tribunal determined that only half of those site warden services (which in themselves were 50% of the site management fees) should be properly charged to the service charge under the terms of the lease, hence the tribunal's overall reduction to 25%. In other words, the tribunal accepted the evidence of Mrs Conn that 50% of the Site warden and site management costs would relate to what Mrs Conn called "site warden services." The tribunal accepted that those services were provided, but on Mrs Conn's evidence, found that many of those services were personal services for individual chalets. Of the 50% of the costs charged that related to site warden services, the tribunal found that only 25% of those costs could be properly charged to

the service charge. This is explained at paragraphs 54-60 of the tribunal's decision, taken together with the analysis of costs appended to the decision.

19. The Respondent at paragraph 4.3 of the grounds (cited at paragraph 16 above), submits that the reduction in recoverable Site warden services to 25% for 2018/2019 and 2019/2020 and 15% for 2020/2021 are "*without explanation and contrary to the Tribunal's own findings."* This is not the case as the tribunal's approach is clearly set out in paragraphs 52-60 and the basis for the figures is given in paragraph 57 of the decision. The 15% is clearly explained as being a lower percentage as a result of the covid restrictions and limited occupancy of the site. In other words, that of the 50% of costs that Mrs Conn estimates were related to site warden costs, then for 2020/21, only 15% of that time was properly chargeable to the service charge for the common parts given that the site was at very limited occupancy.

20. Permission to appeal on this third ground is refused.

21. Permission to appeal on all three grounds sought is therefore refused for the reasons set out in this decision.

DATED this 19th day of May 2023

Richard Payne
Tribunal Judge.