

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Reference:** LVT/0054/03/22

**Re:** Shire Hall, Pentonville, Newport, NP20 5HB

**Application:** An application under Section 27A of the Landlord and Tenant Act 1985

**Applicant:** Redi-94 Limited

**Respondents:** ~~Victoria Higgins (formerly) Hobbs (flat 1)~~

Edward Baker (flat 2)

EGW Properties Ltd (flat 3)

Sam Foley (flat 5)

Chris & Zoe Sully (flat 7)

~~Romaine Perego (flat 9)~~

Melanie Neal (flats 11, 16 & 18)

Jake Gregory (flat 13)

Sally James (flat 15)

Colin Paton (flat 4)

Georgia May Thear Graham (flat 6)

Gemma Harris (flat 8)

Joshua Edwards (flat 10)

Andrew Taylor (flat 12)

Paul Hughes (flat 14)

Kristian Movahed (flat 17)

**Representation:**

Ms Stephanie Lovegrove of Counsel, instructed by Property Management Legal Services Ltd,  
for the Applicant

Mr Edward Baker (at about 2.45pm on 1 May 2024 only)

No appearance by or on behalf of EGW Properties Ltd

**Hearing dates:** 30 April and 1 May 2024

**Panel:** Dr Christopher McNall (Lawyer-Chairperson)  
Mr Kerry Watkins (Surveyor Member)

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**DECISION NOTICE**

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**DECISION**

1. The reasonable sum on account of service charge demands for the purposes of Landlord and Tenant Act 1985 section 27A(3) as against Mr Baker and EGW Properties Ltd is £630,666 exclusive of VAT.
2. Mr Baker's proportion of that sum is 9.24189%.

3. EGW Properties Ltd's proportion of that sum is 5.87119%.

### **REASONS**

1. This is a complex and wide-ranging dispute about the condition of a Grade 2-listed former municipal building, built in the early 1900s, and converted to residential use in 2014.
2. The dispute has been very protracted. It began with an application by the freeholder in March 2022. After at least two case management hearings, a site visit and two consecutive days of hearings in April 2023, two further days of hearings in October 2023 (truncated to one day because of late disclosure by the Applicant), an agreed stay for ADR, and two days of hearings in April 2024, an agreement was eventually reached between the Applicant and the represented Respondents on the afternoon of 1 May 2024. The Tribunal was asked to approve a detailed consent order between them, and did so. The represented Respondents, between them, in proportions which were set out, agreed to pay the Applicant £530,000 inclusive of VAT and legal costs.
3. The fact of payment moving from the represented Respondents to the Applicant is entirely unsurprising. On the morning of 30 April, Mr Morris had helpfully confirmed to us that it was not in dispute that the represented Respondents were going to have to pay the Applicant some money, and that, even taking his clients' case at its very highest, there was a minimum sum which would have to be paid. That was something between £250,000 and £717,938 plus VAT (taking the Applicant's case, as it then stood, at its highest: see pages 3780 and 3781 of the bundle).
4. Beyond that, we do not know the precise reasons which led to the terms of the agreement between the Applicant and the represented Respondents. Nor can we: that discussion is protected by privilege. The represented Respondents were able, in reaching the deal which they did, to deploy to good effect the legal advice and representation which they had, between them, paid for. But we do know that the represented Respondents were challenging the application on a number of bases, including the operation of the doctrine of equitable set-off (and the effect, if any, of the decision of the Lands Tribunal in Continental Property Ventures Inc v White [2007] L&TR 4) and it seems to us that it is reasonable to infer that the overall agreement gave appropriate weight to the scope of the overall argument advanced by the represented Respondents. We noted that Mr Morris did not dissent from that proposition when it was outlined to us by Ms Lovegrove.

5. The hearings over the past year were principally taken up with careful exploration of a extremely significant volume of conflicting expert evidence, from Mr Kuhlman (for the Applicant) and Mr Cushion (for the represented Respondents). Both gave oral evidence, and they had each prepared a series of lengthy individual reports. There were also joint reports, the last of which was dated 13 March 2024, identifying some areas of agreement (page 3750) but with a slew of remaining areas of disagreement (page 3754 and onwards). Much of the bundle, eventually coming to about 3900 pages, was taken up with their expert evidence. Their evidence, given on a concurrent ('hot-tubbing') basis, took several days in two tranches. It eventually concluded on the morning of 1 May with explanation of the experts' competing figures, which had been adjusted (mainly by Mr Cushion) overnight. The experts were then formally released by the Tribunal.
6. The fact of the Consent Order meant that evidence which was to have been heard from three of the tenants - Mr Foley, Mr Taylor, and Ms Thomas - was no longer needed. The only outstanding matter of evidence - arguably - was for Mr Haig, the building's manager (whose evidence had originally been heard in April 2023) to confirm as true a second witness statement dated 19 October 2023 outlining the works done since April 2023. However, the Applicant's need to call that evidence was obviated by the fact that the works were agreed as having been done by the represented Respondents.
7. After hearing submissions as to the consent order, we explored with Counsel for the Applicant how the application as against the unrepresented respondents - Mr Chris Sully, Mr Baker and EGW Properties Ltd - should be dealt with, in the light of the fact that none had attended or had been represented, that the hearing had proceeded in their absence, and that none had been parties to the consent order.
8. Mr Chris Sully had written to the Tribunal explaining that he was close to reaching an agreement with the Applicant, and did not wish to attend the hearing. In the light of what he had told the Tribunal, we considered that it was appropriate to adjourn the application as against him.
9. We had not heard or received any submissions or evidence by or on behalf of Mr Baker (who had originally been a represented Respondent, but then - as was his right - had decided to part company with his lawyers, and to continue as a litigant in person) or EGW Properties Ltd. It was submitted to us that neither Mr Baker nor EGW Properties Ltd had engaged with the proceedings at all. In the case of EGW Properties Ltd, that is entirely true.
10. In the case of Mr Baker, it is not quite accurate. He was represented at an early stage of the proceedings, although do not know precisely when Mr Baker ceased to be

represented. But (despite having one of the largest flats, and hence one of the largest stakes in this dispute) he did not personally attend the site visit (and we did not see inside his flat); and, except as set out below, did not personally attend any of the seven days of hearings. He had not filed any evidence, despite being allowed to do so.

11. Counsel for the Applicant invited us to dispose of the Application as against Mr Baker and EGW Properties Ltd by finding that the sum of £630,666 ex VAT, being the adjusted sum eventually arrived at by Mr Kuhlmann, was a reasonable sum for certain specified works and on account of service charge demands.
12. She submitted that Mr Baker and EGW Properties Ltd's proportions, based on the agreed areas of their flats, were (i) 9.24189% as to Mr Baker (Flat 2) and (ii) 5.87119% as to EGW Properties Ltd (Flat 3). These accord with the unchallenged figures at page 1912 of the bundle (albeit those are expressed at two decimal points and not five).
13. We retired for about 10 minutes to consider those submissions. When we returned to the video hearing room, Mr Baker, despite his failure to have taken any part in the proceedings up to that point, or even on that day, had joined the hearing. He had joined using a mobile phone, was visible and audible, was sat in a motor vehicle, and was wearing a seatbelt. We asked him if he had received notice of the hearing, and he told us that he had. He told us that one of the represented Respondents had texted him saying that they had done a deal, and that he wanted to do the same deal. We told him that brokering a deal was not part of our function. We asked him what he was asking us to do or if he had any representations to make as to why we should not make an order in the terms sought by the Applicant, which we outlined to him. He did not make any request to us, nor make any representations. He did not ask for an adjournment or a postponement (and Rule 15(2) in any event sets out the default position that there shall be no adjournment or postponement). Given the circumstances, it is impossible to see what useful purpose an adjournment or postponement would have served. Mr Baker did not indicate that he had any knowledge of anything which had happened in the proceedings before learning of the agreement, a mere 10 minutes or so earlier after almost two years of proceedings and evidence. Unlike Mr Sully, he had not been in touch with the Tribunal to inform it that he was seeking to negotiate with the Applicant.
14. Having conducted a site visit, and heard and considered the evidence, we consider that the following scope of work is reasonable. It is the same as that agreed by the Applicant and the represented Respondents. Part of the Scope of Works in particular affects Mr Baker. For the avoidance of doubt, we consider, having seen the exterior of his flat (the old courtroom), both from ground level and above, that the specified works to the exterior of the courtroom are reasonable.

**PRELIMINARIES:**

1. Contractors to include and list preliminary items.
2. Welfare to be provided by contractors to schedule 2 CDM2015
3. Health & Safety / CDM2015 is the responsibility of contractors.
4. Contractors to carry £5M public and employers liability insurance.
5. Water for works provided free issue from landlords supply
6. Electricity for works provided free issue from landlords supply
7. Contractors to assess suitability of free issue supplies and allow for any additional certificates or works required to utilise landlord supplies
8. Buildings are fully occupied throughout works, no restrictions to be allowed for residents access / egress during works; and contractors are deemed as to have included for any required signage or barriers or materials or labour required for this purpose.
9. Inspections during works will be required to record the works
10. The buildings are grade 2 listed by CADW, and any deviation to the consented works are to be first agreed in writing with the conservation officer / CADW PRIOR to proceeding. It is the responsibility of the contractors to ensure this aspect is adhered to.

**ROOFS:**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. Replace defective slates where found with like for like materials
3. Replace or repair defective lead where found with like for like materials
4. Replace or repair defective flashings where found with like for like materials

5. Replace or repair defective ridge or hip tiles where found with like for like materials
6. DOFF clean exterior chimneys x 9 stone work to remove algae, pollution, mosses and residues.
7. Repairs to stone where necessary to 9 x chimneys
8. Repairs necessary to pointing to 9 x chimneys
9. Manufacture and install 9 x ventilated limestone cappings to 9 x chimneys (first removing 2 x concrete cappings) to approved consented methods.
10. Replace lower rear flat roof (appx 22mtr<sup>2</sup>) with approved single ply membrane system, to include upstands / flashings.
11. Repairs necessary to timber lantern to remove decay / replace defective putties.
12. Re-decorate timber lantern to flat roof area.

**SOUTH FAÇADE (FRONT ELEVATION):**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. DOFF clean exterior stone work to front façade to remove algae, pollution, mosses and residues.
3. Kime Locasil / Ecosil treatment applied to stones to the front façade to prevent penetrating dampness through stoneworks.
4. Repairs necessary to stones (crack repairs) to front façade.
5. Repairs necessary to pointings within the front façade, where found missing or defective.
6. Rainwater goods inspections and repairs where found defective to front elevation.
7. Stone stabilisation repairs to 4 off 3 rd floor pediments to front façade.

8. Repairs necessary to timber windows and doors to front façade, to remove decay/ replace defective putties.
9. Repairs necessary to timber windows and doors lime seals to fabric and structure to front façade to provide watertight junctions.
10. Re-decoration of external windows and doors to front façade.
11. Re-decoration of timber fascias / soffits / barge boards to front façade.

**EAST FAÇADE (LEFT SIDE ELEVATION):**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. DOFF clean exterior stone work to east side façade to remove algae, pollution, mosses and residues.
3. Kime Locasil / Ecosil treatment applied to stones to the east side façade to prevent penetrating dampness through stoneworks.
4. Repairs necessary to stones (crack repairs) to east façade.
5. Repairs necessary to pointings within the east façade, where found missing or defective.
6. Rainwater goods inspections and repairs where found defective to east side elevation.
7. Repairs necessary to timber windows and doors to east façade, to remove decay/ replace defective putties.
8. Repairs necessary to timber windows seals to fabric and structure to east façade to provide watertight junctions.
9. Re-decoration of external windows to east façade.
10. Re-decoration of timber fascias / soffits / barge boards to east façade.

**WEST FAÇADE (RIGHT SIDE ELEVATION):**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. DOFF clean exterior stone work to west side façade to remove algae, pollution, mosses and residues.
3. Kime Locasil / Ecosil treatment applied to stones to the west side façade to prevent penetrating dampness through stoneworks.
4. Repairs necessary to stones (crack repairs) to west façade.
5. Repairs necessary to pointings within the west façade, where found missing or defective.
6. Rainwater goods inspections and repairs where found defective to west side elevation.
7. Repairs necessary to timber windows and doors to west façade, to remove decay/ replace defective putties.
8. Repairs necessary to timber windows seals to fabric and structure to west façade to provide watertight junctions.
9. Re-decoration of external windows to west façade.
10. Re-decoration of timber fascias / soffits / barge boards to west façade.

**NORTH FAÇADE (REAR ELEVATION):**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. DOFF clean exterior stone work to north rear façade to remove algae, pollution, mosses and residues.
3. Kime Locasil / Ecosil treatment applied to stones to the north rear façade to prevent penetrating dampness through stoneworks.
4. Repairs necessary to stones (crack repairs) to north rear façade.



5. Repairs necessary to pointings within the north rear façade, where found missing or defective.
6. Rainwater goods inspections and repairs where found defective to north rear elevation.
7. Repairs necessary to timber windows and doors to north rear façade, to remove decay/ replace defective putties. 8. Repairs necessary to timber windows seals to fabric and structure to north rear façade to provide watertight junctions.
9. Re-decoration of external windows and doors to north rear façade.
10. Re-decoration of timber fascias / soffits / barge boards to north rear façade.

**FORMER COURTROOM OCTAGONAL BUILDING (REAR ELEVATION ATTACHED):**

1. Temporary access scaffolding to provide access to all work areas to facilitate works.
2. DOFF clean exterior stone work to former courtroom façades to remove algae, pollution, mosses and residues.
3. Kime Locasil / Ecosil treatment applied to stones to the former courtroom façades to prevent penetrating dampness through stoneworks.
4. Repairs necessary to stones (crack repairs) to former courtroom façades
5. Repairs necessary to pointings within the former courtroom façades, where found missing or defective.
6. Rainwater goods inspections and repairs where found defective to former courtroom façades.
7. Repairs necessary to timber windows and cupola to former courtroom façades, to remove decay/ replace defective putties.
8. Repairs necessary to timber windows seals to fabric and structure to former courtroom façades to provide watertight junctions.
9. Re-decoration of external windows and cupola to former courtroom façades.

10. Re-decoration of timber fascias / soffits / barge boards to former courtroom façades.

**EXTERIOR GROUNDS:**

1. Exterior grounds excluded

**INTERIOR COMMON AREAS:**

1. Interior common areas are excluded
2. Mitigation methods to reduce condensation to be applied by managing agents.

**INTERNAL PRIVATE AREAS:**

1. Internal private areas are excluded
2. Mitigation methods to reduce condensation to be applied by residents / leaseholders.

12. It is not in dispute, and we in any event find, that various urgent works had been undertaken and completed during the currency of the application. These were:

1. Replacement of a delaminated upstand to rear felt flat roof.
2. Replacement of a failed defectively lined downpipe and hopper to Bay 3 on front elevation.
3. Replacement of a holed steel box gutter Bay 5 front elevation with a heritage matched cast aluminium range.
4. Replacement of a failed downpipe to Bay 5 on front elevation.
5. Repointing missing lime mortar joints to Bay 5 window surrounds / heads / cills.
6. Removing weed growth / debris from gullies, rainwater goods and façade where scaffolding existed.
7. Removing and replacing 7 No. defective cracked slates above Bay 5 window head (main front pitch of roof secured with copper tabs).
8. Removing rot, and full refurbishment of second floor Tripartite Bay 5 large thermal windows, including full re-decorations.
9. Removing rot, and full refurbishment of first floor Tripartite Bay 5 large thermal windows, including full re-decorations.
10. Removing and replacing lime edge seals to windows first and second floor Bay 5 front façade.

11. Replacement lead flashing to rear courtroom / parapet abutment.
12. Repair of plaster damages and redecorations to Flat 1 interior. 13. Repair of plaster damages and redecorations to Flat 9 interior.
13. Having seen and heard the evidence, and bearing in mind that our task in this dispute, in large measure, is simply to determine a sum which is, in our view, a reasonable on account payment for works yet to be undertaken, we find that the overall sum of £630,666 excluding VAT is a reasonable sum. We are quite satisfied, on the basis of everything which we saw and heard, that this is a building requiring substantial work, and we are not concerned with the fine detail of the proposed manner of undertaking those works.
14. This figure is made up of several elements. We heard and explored extensive oral evidence about these. There are fees and works for the works tendered in 2021, including provision for preliminaries (£153,669) and a 20% contingency budget, excluding Bills 5-15 inclusive (internal works to flats, and MHVR works) and part of the bills for other works including MHVR: see page 3780 and Item 43 on page 3781. In relation to MHVR works, the Applicant in its evidence accepted that these may not be needed immediately, but may nonetheless have to form part of a further phase of works.
15. There are then increases to the amount of pointing, stone repairs and roof repairs identified since 2021, with a corresponding pro rata increase in fees. Three further sets of works, identified as TSD01, TSD04, and TSD03, were also to be undertaken. An uplift of 18.3% was to be applied to the whole to account for building cost inflation from 2021/Q1 to 2024/Q2, in accordance with the BCIS. The landlord accepted that the leaseholders were not to be called upon to contribute to Item 52 (chimney cappings costs, £13,474 ex VAT) or Item 53 (flat roof replacement, £14,758 ex VAT), coming together to £28,233 ex VAT, on the basis that those should have been done at the development stage, meaning that the leaseholder contribution required was £630,666: see page 3783 of the bundle.
16. Three observations:
  - 16.1 Payments on account are just that. After relevant costs had been incurred, any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise: Landlord and Tenant Act 1985 section 19(2).
  - 16.2 The figure of £630,666 is higher than Mr Cushion's eventual figure, but the test is one of reasonableness overall.

- 16.3 It is higher than the figure in the consent order entered into by the represented Respondents, but we have already outlined why that is not a reliable yardstick for assessing the liability of the unrepresented Respondents.
17. This decision may, with the permission of the county court, be enforced in the same way as an order of the court.

Signed electronically: Dr C McNall

Dr Christopher McNall  
Lawyer-Chairperson  
16 May 2024