

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0028/11/23

In the Matter of: 23-36 Pocketts Wharf, Maritime Quarter, Swansea, SA1 3XL.

In the matter of Applications under Section 19, 27A and Section 20C of the Landlord and Tenant Act 1985

APPLICANT: Ann Elen Pierce

RESPONDENTS: FirstPort Property Services

TRIBUNAL: Tribunal Judge Kelly Byrne
Mr Hefin Lewis, Surveyor Member
Mrs Carole Thomas, Lay Member

VENUE: On the papers

DATE OF HEARING: 15th July 2024

DECISION

- 1. The Tribunal refuses the Applicant's Application under Section 27A of the Landlord and Tenant Act 1985**
- 2. The Tribunal grants the Applicant's Application under section 20C of the Landlord and Tenant Act 1985**

Background

1. Ann Pierce ("the Applicant") submitted an application to the Tribunal for a determination under section 19, 27A and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"), in respect of 23-36 Pocketts Wharf, Maritime quarter, Swansea, SA1 3XL ("the property") for the service years ending 2022, 2023 and 2024, for the building insurance element of the service charge. The property is also known as "Block B" at the Pocketts Wharf development.
2. The Applicant is the leasehold owner of flat 30 at the property under a lease dated 23rd June 1993, made between (1) Lovell Urvan Renewal Limited (2) O.M. Limited and (3) Ann Elen Pierce ("the Lease").
3. OM Limited is the named management company in the Lease. Firstport Property Services Limited ("the Respondent") is a management company, which acts as a managing agent. Proxima GR Properties Limited is the head lessor in respect of the Property and is the Applicant's immediate landlord.

The law

4. s.19 of the Landlord and Tenant Act 1985 states

Limitation of service charges: reasonableness.

(1) 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

5. Section 27A of the Landlord and Tenant Act 1985 states:

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence, of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

6. Section 20C of the Landlord and Tenant Act 1985 states that;

“a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal,.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.”

7. The application in the case of proceedings before a Leasehold Valuation Tribunal is to be made to the tribunal before which the proceedings are taking place and the tribunal may make such an order on the application as it considers just and equitable in the circumstances.

The Lease

Service Charge

8. Clause 3(a)

“With the Lessor to observe and perform the obligations on the part of the Lessee set out in parts one and Two of the Eighth Schedule hereto”

Clause 3(b)

“With the Management Company to observe and perform the obligations on the part of the Lessee set out in Parts One and Two of the Eighth Schedule hereto”

Paragraph 7 of Part I of the Eighth Schedule

Covenants by the Lessee

“To pay the Management Company the Lessee’s portion of the maintenance Expenses at the times in the manner herein provided.”

Paragraph 1 (a) of the Seventh Schedule

“The Lessee’s Proportion means a 9.43 part of the amount attributable in connection with the matters mentioned in Par A of the Sixth Schedule”

Paragraph 2 of the Seventh Schedule

“The certification of the accountant referred to in paragraph 9 of Part E of the Sixth Schedule hereto shall (subject as hereinafter mentioned be binding on the Management Company and the Lessee.”

Paragraph 6 of the Seventh Schedule.

“The Lessee shall pay to the Management Company the Lessee’s Proportion of the Maintenance Expenses in manner following that is to say: -

- (a) In advance on the First day of January and the First day of July in very year throughout the said tern one half of the Lessee’s Proportion of the amount estimated from time to time by the Management Company or its managing agents as the Maintenance Expenses for the year the first payment to be apportioned (if necessary) from the date hereof*
- (b) Within twenty-one days after the service by the Management Company on the Lessee of a certificate in accordance with paragraph5 of the schedule for the period in question the Lessee shall pay to the Management Company the balance by which the Lessee’s Proportion received by the Management Company from the Lessee falls short of the total sums paid by the Lessee to the Management Company pursuant to paragraph 6 (a) of this Schedule during the said period and any overpayment by the Lessee shall be credited against future payments due from the Lessee to the Management Company”*

Paragraph 5 of Part A of the Sixth Schedule, including subsections (b) and (c)

Included as part of the service charge are:

“insuring the Building and other structures against loss or damage by fire, storm, tempest and such other risk as the Management Company shall decide...”. The Management Company determines the Company/Office with which insurance is placed and the sum insured and the risks covered i.e. it has discretion, but the insurance will cover the cost of demolition, clearance and reinstatement, including architects/surveyors and statutory fees

Paragraph 16 of Part E of the Sixth Schedule

“any legal or other costs bona fide incurred by the Management Company and otherwise not recovered [i.e. from the Lessee personally] in taking or defending proceedings...arising out of any lease...or any claim by or against any lessee...”

The Applicants case

9. The Applicant has submitted a Scott Schedule setting out that the service years from 2022 through to 2024 are in dispute in respect of the cost of the insurance at the property (Block B). This is further advanced in the Applicants written submissions.
10. The Applicant states that following revaluation of the property in 2021, the charge for the insurance for Block B has risen disproportionately in comparison to Block A. The Applicant submits that these two blocks have similar valuations and historically have had similar insurance premiums charged within the management service estimates. The Applicant lists the estimates as follows:

2021 estimate A block £4900; B block £4980
2021 actual A block £4995.41; B block £5080.77
2022 actual A block £5832; B block £7230
2023 estimate A block £6082; B block £7504
2024 estimate A block £6885; B block £8485
11. The Applicant requests that the insurance costs for Block B, be reduced to a figure comparative to Block A. Being a reduction of approximately £1500 for each of the service years, being 2022, 2023 and 2024.
12. The Applicant describes the property as brick-built development, that has no cladding. B block is a mid-rise three storey development.
13. In respect of comparative insurance quotes, the Applicant states that she has been unable to obtain any from insurance brokers as this has to be done 'en block'. She does however provide a comparative quote for her property based on a (higher than likely to be achieved) market value of £350000 for a 3-bedroom maisonette. She states that this seems to compare roughly with friends who live in similar properties but are self-managing. She points out that as the lease requires her to pay 9.43% of this years' estimates, that this equates to £800 and is far above any of the comparative estimates given to her [p.122-124]
14. The Applicant provides a document called 'Historical Insurance costs Pocketts Wharf' [p.114] which contains figures from 2014 to 2023 for Blocks A, B & C.
15. The Applicant has provided a copy of an email from the Respondent dated 12th January 2023 [p.117-118], which appears to be in response to a query raised by the Applicant in relation to the increase of the insurance premium.
16. They advise that the sharp increase could be as a result of the revaluation that was carried out prior to the period of cover that is in question and that this may be the reason for the sharp increase in the premium. That at the time the index linking was around 16% which had driven up the costs of bulk of the insurance increase.
17. The Applicant provides a copy of an email to the Respondent dated 6th February 2023, requesting further information regarding the increase in the insurance premium. She questions why the premium for Block B has increased from £4890 to £7504 when Block A has increased from £5110 to £6082, when the reinstatement costs of Block A and B are similar, being £5,353,500 for Block A and £5,650,000 for Block B.

18. The Respondent replied via email on 1st June 2023, stating:

“The increase in Insurance premium for 23-36 Pockets Wharf is due to the reinstatement cost assessment (RCA) that was completed on 9th December 2021. In this RCA the Declared Value (DV) for 23-36 increased from £ 2,727,193.00 to £3,767,000.00

The RCA was then processed on 4th January 2022, from which the additional premium is calculated to the renewal date, a shorter period then the standard 12month period.

Upon renewal the increase in DV would become a factor for the entire 12-month period, hence the bigger increase in Premium.

Please note that whilst there are less flats in 23-36 (in comparison to 7-22) the square footage of the building is 80m² larger hence the higher Declared Value.

In conclusion, the DV's for this property were updated in this current RCA as you will now note that the DV's for the block are in accordance with the Square footage of the blocks”

The Respondents case

19. The Tribunal had before it their case statement [p.126-136] and their supporting documentation. The Respondent submits that Service charges have been properly budgeted, demanded and accounted for. They set out their response in respect of the reasonableness of the service charge which is what is disputed by the Applicant.

20. They state that the following Building Insurance costs for the property are disputed by the Applicant:

Year	Building Insurance Costs (Block B) Premium	Building Insurance Cost (Block B) Tax (IPT)	Total
2022	£4,562.59	£547.51	£5,110.10
2023	£6,121.38	£734.57	£6,855.95
2024	£6,567.69	£788.12	£7,355.81

21. They provide a copy of the Insurance Certificates for Building Insurance [p.329] from Zurich. This certificate covers the period from 1st July 2021 to 30th June 2022, in respect of the property (Block B). The Building Declared Value is £2,727,193. The total premium being £5,110.10 of which the Applicant is liable under the lease to pay 9.43%.

22. The Insurance Certificates for Building Insurance [p.330] from Zurich, which covers 1st July 2022 to 30th June 2023 for the property. The Buildings Declared Value is £3,767,000. The total premium is £6,855.95 for which the Applicant is liable to pay 9.43%.

23. The Insurance Certificates for Building Insurance [p.331] from Zurich, which covers 1st July 2023 to 30th June 2024 for the property. The Buildings Declared Value is £4,369,720. The total premium is £7,355.81 for which the Applicant is liable to pay 9.43%.
24. The Respondents state that included in the budgetary paperwork for the service charge, a covering letter was provided explaining the increase in insurance premiums. The wording in the letters served in 2022 and 2023 is similar; it advised the tenant that the increase was due to the changes in the insurance industry and 'market hardening'. They also state that the change to building regulations has contributed to higher insurance premiums.
25. In the cover letter provided with budgetary paperwork for 2024, they explained that the insurance market conditions continued to be difficult and that the primary reason is due to the Index Linking of the Building Declared Value (BDV).
26. The Respondent refers the Tribunal to a letter from Gallagher, their Broker for building insurance, dated 1st March 2024, which they state confirms the position in the insurance market [p.412-413]. The letter states that there is a:
"challenging market in respect of residential properties as insurers are redressing their books so that they have more even balance of residential and commercial properties. Insurers are also seeing the number of residential claims increasing in both volume and cost and so capacity is shrinking, indeed some insurers are exiting the residential market"
27. They confirm that the following insurers were approached, Ageas, Allianz, Aviva, Covea, Ecclesiastical, NIG, QBE and the holding insurer Zurich. With Zurich being the only company to offer insurance terms, which they state provided competitive premiums.
28. The Respondent submits that the Applicant's challenge to building insurance, respectfully, it is not a material/substantive one, that it is little more than a bare allegation that the increase in insurance costs is excessive/disproportionate.
29. The Respondent does acknowledge that the Applicant has attempted to secure quotations to substantiate the challenge but submit that they aren't of any use because they are not comparable to the actual Block (i.e. Block B, including all of its flats and communal structural parts) and only relate to her property (i.e. Flat 30 itself). They also submit that there is no proper indication of terms/extent of coverage.
30. In summary the respondent submits "that the increases were as a result of external factors either pertaining to the building itself and/or the market generally. The situation has only been compounded by the rising cost of servicing and inflation. All of these factors and pressures are not the fault/responsibility of the Respondent. The Block (Block B) must be insured year-on-year for the benefit of all owners, despite increases in costs."

"that the service charges for building insurance are reasonable (and payable) and it would not be reasonable/proportionate to arbitrarily reduce insurance contributions by £1500 (requested by the Applicant) or otherwise"
31. In respect of reasonableness, the Respondent states that the insurance costs are reasonable and payable. That there is a contractual obligation for the Applicant to pay under the Lease and that the Respondent is merely seeking to recover the costs for payment of the building insurance and is not seeking to profit.

32. The Respondent states that they have taken reasonable steps to ensure coverage and reasonableness of costs for the building insurances. That the burden of proof rests with the Applicant and they submit this burden has not been discharged by the Applicant.
33. The Respondent submits that the Tribunal should determine:
- (i) the challenged service charges for building insurance are reasonable and payable and
 - (ii) no Section 20C Order is given.

Decision

34. The Tribunal convened on 15th July 2024 to consider this matter on the papers. It had before it a 418-page Hearing Bundle comprising of evidence from both the Applicant and Respondent. The Tribunal has carefully considered all the evidence before it.
35. The Applicant did not dispute that the cost of the building insurance premium fell within the scope of the service charge provisions in the Lease, and the Tribunal was satisfied that in principle such expenditure, actual or anticipated, was permissible. As to whether the expenses were reasonably incurred, in the first instance the onus is on the Applicant to evidence such matters that might lead to a financial adjustment.
36. The Respondent has provided evidence in the form of the Insurance Certificates for Building Insurance from Zurich, for the property (Block B), for the following periods and the following amounts:
- 1st July 2021 to 30th June 2022 - £5,110.10
 - 1st July 2022 to 30th June 2023 - £6,855.95
 - 1st July 2023 to 30th June 2024 - £7,355.81
37. These are costs that have been incurred by the Respondent in respect of the building insurance for the property (Block B) for the respective years. Under the terms of the Lease, the Applicant is contractually obligated to pay an apportionment of the insurance premium on a 9.43 percentage.
38. The Applicants case is that in comparison with other blocks on the development, namely Block A, that the insurance premiums are too high. The Applicant has produced no real comparable evidence to the Tribunal to demonstrate that the amount of costs is unreasonable or that cheaper insurance could have been provided by a different insurance company in respect of the whole of the building. We do note the difficulty in the Applicant being able to obtain such evidence. The Tribunal note that even if this evidence had been provided there are other factors that it would need to take into consideration.
39. The Tribunal must consider whether the service charge was reasonably incurred, which does not mean that the Respondent necessarily must choose the cheapest quote **London Borough of Hounslow V Waaler [2017] EWCA Civ 45.**
40. The Tribunal must base its decision on the evidence before it. We attach weight to the letter from Gallagher, their Broker for building insurance, dated 1st March 2024 [p.412-413], which sets out the steps that they took to find an insurer for the building, we note that Zurich were the only insurance company to respond with a quote and terms. We have no evidence before us to compare the reasonableness of the quote.

41. The insurance premium has been incurred by the Respondent; this is not in dispute. Nor is it in dispute that it is unreasonable for the Applicant to pay towards the building insurance premium for the building, as such insurance is a legal requirement.
42. What is clear to the Tribunal is that the increases to the annual premiums have been due to a number of factors, which include the revaluation of the property in 2021 which increased the value of the property from 2.73 million to 3.77 million, therefore driving up the cost of the premium, the market hardening and the significant increase in the BCIS index linked BDV (Building Declared Value) with the average from July 2022 to July 2023 being at 17.8 %.
43. The Tribunal has not been provided with any evidence by the Applicant to establish a prima facie case and therefore finds that the service charge for the building insurance of:

1st July 2021 to 30th June 2022 - £5,110.10

1st July 2022 to 30th June 2023 - £6,855.95

1st July 2023 to 30th June 2024 - £7,355.81

has been reasonably incurred, with the Applicant liable to pay an apportionment of 9.43% for each service year.

Application under s.20C of the 1985 Act

44. The Applicant made an application under s.20C of the 1985 in respect of the ability of the Respondent to recoup the legal costs in defending this application under the service charge provision within the lease.
45. The Tribunal felt that they had insufficient information to make such a determination and issued further directions on 16th July 2024, seeking representations for both parties and a cost schedule from the Respondent.
46. Further submissions were provided to the Tribunal by both parties, in compliance with these directions; the Respondent submitted a cost schedule.
47. The Tribunal convened on 21st August 2024 to consider the application under s.20C.
48. The Applicant submits that they challenged the increase as it was almost a 50% increase to the insurance charge in 2022 budget for the property and that there was no pre-warning that there would be such an increase.
49. That when she sought clarification, none was provided for almost a year and that when a response was received it was presented as a 'fait accomplis'. That "The only hint of explanation provided was that the square footage of B block compared to A block was 80sqm more. There was no effort to compromise despite our challenge that the two blocks had similar valuations (mainly because A block has a lift and AOV's – both expensive items). We were eventually advised a revaluation had been undertaken. However, the revaluation showed both buildings remained similar in value. This was frustrating to B block owners in the context of 25 years of the premiums payable for A and B blocks being very similar"
50. The Applicant feels that the Respondent had not exhausted all avenues to address the dispute, in that they could have provided further information. She submits that they could have approached local insurance brokers.

51. The Applicant submits that she believes the application is justified, as the Respondents actions or inaction is “unjust, unequal and unbalanced in the context that, by hanging significant legal charges over the heads of leaseholders they will deter any challenges to their poor practises.”
52. The Respondent submits that a s.20C application should be refused as Paragraph 16 of Part E of the Sixth Schedule of the Lease states that:

“any legal or other costs bona fide incurred by the Management Company and otherwise not recovered [i.e. from the Lessee personally] in taking or defending proceedings...arising out of any lease...or any claim by or against any lessee...”
53. The Respondent “respectfully submit that for all of the reasons set out within the Respondent’s Statement of Case (the contents of which is therefore repeated for the purposes of this Statement), the Application ought to be dismissed or otherwise a determination given that the challenged charges are reasonable/payable”
54. That in “the event that the Respondent is successful either wholly or on balance, the Respondent also respectfully submits that a Section 20C LTA 1985 Order should not be given as a natural consequence of that outcome (if applicable).”
55. The Respondent has provided a schedule of costs.
56. The Tribunal must consider what is just and equitable in all the circumstances. Whilst the Tribunal has determined that the service charges in dispute, namely the insurance premiums from 2022-2024, have been reasonably incurred, there was a dramatic increase to the premiums during this period. The Tribunal is of the view that this could have been explained in more detail to the Applicant and the tenants. It notes that there were explanation paragraphs within the covering letters as referred to above, but the Tribunal feel that this could have been expanded on and the lines of communication between the Respondent and the Applicant could have been better.
57. The Applicant queried the increase in cost; we do not have a copy of the Applicants email only the response dated 12th January 2023, which starts with an apology for not replying straight away. We do not know the length of the delay, only that there was one. The Applicant responded to this email on 6th February 2023, seeking further clarification as in her words neither of the explanations “make any sense to me”. The Applicant did not receive a reply until 1st June 2023, with a further explanation, which clearly did not satisfy the Applicant as she made an application to this Tribunal.
58. In addition, the Tribunal note the revaluation exercise carried out in 2021, where the declared value (DV) of Block B increased from circa £2.73 million to £3.77 million. The increase by over one million is surprising given that the previous reinstatement would have been index linked. Given the significant increase of circa 28%, the Tribunal is of the view that the applicant was entitled to further explanation of this significant increase which might have addressed some of her concerns.
59. The Tribunal is of a view that these proceedings could have been avoided if the Respondent was willing to meet with the Applicant and/or Tenants to explain the position regarding the increase to the insurance premium in detail.

60. The Tribunal therefore determines that it is just and equitable in all of the circumstances to grant the s.20c application. The costs of these proceeding are not to be attributed to the service charge.

Dated this 22nd day of October 2024

A handwritten signature in black ink, appearing to read 'K. Byrne', written in a cursive style.

Tribunal Judge K Byrne