Residential Property Tribunal for Wales
Y Tribiwnlys Eiddo Preswyl
Leasehold Valuation Tribunal

Reference LVT/0022/07/24

In the matter of 14 Ffordd Glyder Y Felinheli Gwynedd LL56 4QX

And in the matter of an application under s27A, s19 and s20C of the Landlord and Tenant Act 1985

Applicant: Jasmine Jones

Respondent: Port Dinorwic Yacht Harbour Residential Estate Ltd (PDYHRE Ltd)

Tribunal panel: Gwyn Eirug Davies -Tribunal Judge
Neil Martindale – Surveyor member
Bill Brereton – Lay member

Representation: The Applicant appeared in person
Philip Byrne Counsel for the Respondent

This matter was heard by video link on Microsoft Teams on the 2nd December 2024

Decision:
The tribunal finds that the interim service charges for 2024-2025 are recoverable under the lease, are reasonable in amount and are reasonably incurred as interim charges

Background

1. The leasehold property known as 14 Ffordd Glyder y Felinheli is vested in the name of the Applicant for the residue of the term of 999 years from the 24th June 1978 created by a lease dated the 9th January 1973 made between Portdinorwic Holiday Developments Ltd (1) and Glenys Mary Edwards (2) as varied by a deed of variation dated the 8th January 1998 made between Numberpress Ltd (1) and James Kinloch Montgomerie (2) (both documents together will be referred to as 'the Lease'). The Applicant has owned the property for about 4 years.

2. The Portdinorwic Yacht Harbour Residential Estate is located in around 10 acres of land comprising 120 freehold properties and 76 leasehold properties. The Respondent is the freehold owner of the leasehold properties and of the common parts and is responsible for collection of the service charges in accordance with the terms of the leases and of the amenity leases for the freehold properties. The property owners are shareholders in the Respondent company.

3. This application relates to the interim service charge demand issued on the 24th June 2024 for the period from 24th June 2024 to the 23rd June 2025 in the sum of £2,739.44.

4. Each party prepared and submitted their own bundle. We have read both bundles. The page references in this decision will follow the pagination in the Respondent's bundle unless otherwise stated.

5. The Landlord and Tenant Act 1985 will be referred to as 'the Act' in this decision.

6. The Applicant issued her application to this Tribunal on the 21st July 2024. The Applicant's claim is particularised in her statement of evidence [page 362]. The Applicant helpfully summarises the varies aspects of her claim in the conclusion to her statement [382].

7. The extent of the Applicant's claim can be summarised as follows:

   i) That some of the service and administration charges are not allowable under the Lease and/or have not been substantiated by documentary evidence.

   ii) Lack of compliance with s21 (B) of the Act

   iii) the costs payable under s20B of the Act

   iv) the reasonableness of the administration fees, either being unjustified or unreasonable

   v) an application for an order under s20C of the Act

   vi) a refund of overpayments made in previous years

   ii) failure by the Respondents to consult on major expenditure in accordance with s20 of the Act

8. The Applicant claims for reimbursement of fees and compensation in a separate document. The Tribunal has no power to make such orders.

9. The individual items in dispute are set out in a Scott schedule [27-47].

10. The Respondent disputes all aspects of the application asserting that the interim service charges are fair and reasonable.

11. The tribunal has considered all the evidence and submissions provided in writing prior to the hearing and all the evidence and submissions made during the hearing. We have applied the two-stage reasonableness test law as referred to in the relevant authorities, Hounslow LBC v Waaler [2017] EWCA Civ 45, Regent Management Ltd v Jones [2010] UKUT (LC) and Forcelux v Sweetman and anor [2001] 2EGLR 173, the test being, was it reasonable to incur the cost of the work and was the cost of that work reasonable. We also bear in mind that we are considering interim charges in this case.

12. The relevant sections of the Act under consideration are:

Section 27A

27A 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.

<u>Section 20C</u>
20C Limitation of service charges: costs of proceedings.
(1) 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 or the First tier Tribunal], or the Upper Tribunal, or in connection with arbitration proceedings,
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.
(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court; in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal; in the case of proceedings before the First-tier Tribunal, to the tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court].
(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

<u>Section 19</u>

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.
(2A) . . . .
(2B) . . . .
(2C) . . . .
(3) . . . . . .
(4) . . . . . .
(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

13. Clause 2 of the Lease authorises the lessor to collect 'by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in the repair and maintenance renewal and insurance of all land and buildings from time to time situate on the Lessors Port Dinorwic Holiday development Site and the provision of services therein and other expenditure as the same are set out in the Fifth Schedule hereto…'.

14. The Fifth Schedule to the Lease reads as follows:

Lessor's expenses and outgoings and other heads of expenditure in respect of which the Lessee is to pay a proportionate part by way of Service Charge

1.The expense of maintaining and repairing redecorating and renewing amending cleaning rendering repointing painting varnishing graining whitening or colouring all buildings and all parts thereof from time to time situate on the said Holiday Development site and all the appurtenances apparatus and other things thereto belonging more particularly described in clause 6(1) hereof

2.The cost of insuring and keeping insured throughout the term hereby created all buildings from time to time situate upon the said Holiday Development Site and all parts thereof and the Landlords' fixtures and fittings therein and all appurtenances apparatus and other things thereto belonging and more particularly described in clause 6 (1) against the insurable risks indicated in clause 6(4) hereof and also against third party risks and such further or other risks (if any) by way of comprehensive insurance as the Lessor shall determine including two years' loss of rent and Architect's or Surveyors fees.

3. The cost of employing maintaining and providing accommodation on the said Holiday Development Site of such maintenance and management staff as the Lessor may from time to time in its absolute discretion see fit.

4. The cost of carpeting recarpeting cleaning decorating and lighting the passages landings staircases and other parts of the buildings erected on the said Holiday Development Site enjoyed or used in common and of keeping such parts of such buildings used in common as aforesaid and not specifically referred to in this Schedule in good repair and condition.

5. All charges assessments and other outgoings (if any) payable by the Lessor in respect of all parts of such buildings (other than Income or Corporation Tax)

6. The fees of the Lessor's managing Agents for the collection of the rents of the properties on the said Holiday Development Site and for the general management thereof provided that such fees shall at no time exceed the maximum therefore allowed by the scales authorised or recommended for the time being of the Royal Institution of Chartered Surveyors

7. All fees and costs incurred in respect of the annual Certificate and of accounts kept and audits made for the purpose thereof.

8. The costs of making repairing maintaining rebuilding and cleansing all ways roads footpaths pavements access routes rides forecourts gardens grassed areas sewers drains pipes watercourses party walls party structures party fences party walls or other conveniences and facilities which may from time to time be used or provided for the Lessee.

9. The cost of maintain repairing and renewing the television and radio receiving aerials (if any) installed by the Lessor on the Holiday Development Site.

10. The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning Town & Country Planning Public Health highways street

drainage or other matters relating or alleged to relate to the said Holiday Development Site.

11. All such costs as are not recovered of taking any proceedings or steps against any lessees, tenants or occupiers of any part or parts of the said Holiday Development Site as the Lessor shall from time to time in its absolute discretion feel necessary to take.

15. The Lease sets out the relevant equation for the calculating the service charge, provides for the service charge to be certified by an accountant's certificate and authorises the management company to claim payments in advance and on account of the service charge.

16. The Respondent acts as the management company and is responsible for setting and collecting the service charge.

17. The interim service charge demand served on the 24th June 2024 was accompanied by a document headed 'Service Charge – Summary of Tenant's Rights and Obligations'. This notice does not comply with the requirements of **The Service Charges (Summary of Rights and Obligations and Transitional Provisions (Wales) Regulations 2007** as it contains only the English wording for the notice. The notice must follow the prescribed wording set out in regulation 3 which is in both Welsh and English. A tenant therefore is not obliged to pay any service charge until a compliant notice is issued. The Respondent needs to address this issue and serve notices in the correct form before collecting any further service charges from residents on the estate.

18. The Applicant's case is set out in the Scott Schedule and is supported by written statements and submissions and responses, various other supporting documents, copies of correspondence between the parties and photographs. The Applicant also provided questionnaires purportedly completed by other residents of leasehold properties. As the names of the persons who completed these questionnaires are not given and they are unsigned, then we are not able to attach any weight to the contents of those questionnaires.

19. The response of the Respondent is set out in the Scott Schedule and is supplemented by the witness statements of the following, i) Owain ap Elfed dated 8th October 2024, Gerwyn Lloyd Jones dated 2nd October 2024, Shelley Ann Hughes dated 9th October 2024, and Charles Murray Roberts dated 9th October 2024 (the Chairman of PDYHRE Ltd). These witness statements have been signed by each deponent and contain a statement of truth. These witnesses were present at the hearing, but their evidence was not challenged. Various other supporting documentation was also provided.

20. The service charge budget for 2024-25 is on page 84. The Applicant complains that the cost breakdown lacks transparency and that as such it is not possible to judge the reasonableness of the same. However, as we are considering interim charges, then the Respondent can only in reality provide estimated prospective charges.

21. The issues raised by the Applicant as set out in the Scott Schedule are as follows:

1. Administration charges

   The total amount of this aspect is £5,596, of which the leaseholders pay a proportionate amount namely 28.324%. This equates to £1,585 between 76 leasehold properties. The tribunal agrees that these costs are recoverable as a service charge in accordance with clause 3 of the Fifth Schedule to the Lease. An explanation is provided by the Respondent as to how these charges are apportioned between the freehold properties, the leasehold properties and the costs that are borne by the management company as freeholders.

   The tribunal accepts that this is a large estate with extensive grounds, and it is inevitable that significant amounts will be incurred in administration fees. An indication has been provided by the Respondent of the basis of their calculation for the interim charge. This represents an increase on the administration costs for the year 2023-2024 but it is inevitable in the current economic climate that there will have been some increase in these costs.

   The Applicant does not offer an alternative figure.

   The tribunal finds that these administrative budget costs are claimable under clause 3 of the Fifth Schedule and are reasonable.

2. Administration charges (leasehold)

   The sum of £3,014 is allocated as administration costs solely to the leasehold properties. It is natural that greater costs are incurred with the leasehold properties given the need to observe the lessor's covenants contained in the Lease. This includes arranging the maintenance, collecting the service charge and managing refurbishment projects. This sum equates to £39.65 per leasehold property. This is necessary and reasonable expenditure.

3. Administration Charges -staff costs

   A total of £35,600 is allocated to staff costs. We are told that the management company employs two persons. An Estate Manager is employed at an annual salary of £34,670 and an administrative assistant is employed at an annual salary of £12,300. The total gross salaries together with an overtime allowance and employer's pension contributions make the total £50,850.00. 30% of this amount is allocated as a cost to be borne by the management company leaving a budget of £35,600 for the residents. 80% of this budget is apportioned between the freehold properties (66.187%) and leasehold properties (28.324%) making a total of £8,067. The balance of 20% of the budget, namely £7,120 is allocated to the leasehold properties on the same principle as set out in para 2 above. The above calculation means that £15,187 of the staffing costs are attributed to the leasehold properties. It is noted that the management company sought professional advice in deciding upon an appropriate apportionment.

   The Applicant contends that a total of £10,000 would be an appropriate figure. She argues that the amounts claimed are disproportionate to the operational hours of the office. However, we understand that the hours when the site office are open do not reflect the working hours of the staff. Ms Jones states that she never sees the Estate Manager (Shelley Hughes) on site. However, Ms Jones conceded that

she does not live at the property on a full-time basis and in any event not seeing the Estate Manager on site does not mean that Ms Hughes is not at work. There is evidence provided in the witness statements confirming the Estate manager's working hours and her duties and we have no reason not to accept that she works a full 35-hour week.

Ms Jones argues that there should be review of the work undertaken by the employed staff and of their working methods.

We note that the members of board of directors provide their services for no remuneration at all.

Mr Byrne points out that employing staff to manage the site avoids having to pay VAT on fees that would be otherwise incurred, which represents a significant saving in expenditure.

The sum of £10,00 suggested by the Applicant is an arbitrary figure not supported by any evidence. The Estate Manager has been in post since December 2019 and her salary has hitherto been unchallenged. It is not appropriate to compare salaries with salaries that are paid to other professions.

The tribunal is satisfied that the provisions of the Lease allow the management company to employ staff to undertake the administrative tasks. It is reasonable and necessary for the management company to do so and the costs incurred in managing a large development set in extensive grounds are reasonable.

4. <u>Accounting and Audit fees</u>

   The Applicant suggests that there is no evidence to justify the necessity or competitiveness of the budget costs of £9,000. It is noted that the certified accountancy costs for 2023-2024 amounted to £9,072.

   The Lease sets out the requirement for the production of a service charge certificate each year which must contain a summary of the costs and expenses. The production of this certificate stands as conclusive evidence of the accuracy of the figures. It is therefore essential for such a certificate to be provided annually. This certificate can be provided by the management company's auditors or accountants or managing agents. It is entirely reasonable for the Respondents to engage the firm of Williams Denton Chartered Certified Accountant to provide this certificate. It is not expected that the accountant should comment on the reasonableness of the charges. The accounts are complex dealing with large sums of money. The budget for 2024-25 does not exceed the costs incurred during the previous year. There is no evidence provided by the Applicant to challenge the budget cost or to suggest that the amount is unreasonable. There is no requirement to audit the accounts annually.

5. <u>Administration Charges – Insurance</u>

   The budget for property insurance is £23,000. This management company is obliged to insure the property under the terms of the Lease. All the leases on the estate will be similar in nature and they prohibit a tenant from taking out his or her own buildings insurance. The evidence is that the management company obtained the insurance through an insurance broker who searched the market to obtain the most competitive price. The relevant clause in the Fifth Schedule requires the Respondent to keep the buildings and other appurtenances insured in addition to

'such further or other risks' as they deem appropriate. It is a matter good practice to cover the roads and associated services (site facilities) given that they are not maintained at public expense. It is also accepted that there is a legal duty to obtain 'public and employer liability'. No alternative quotation is provided by the Applicant and there is no evidence that a 25% uplift has been applied. The increase in the premium reflects the general increase in the cost of insurance. Given especially that the policy has been obtained through a broker then we conclude that the cost is reasonable.

6. Administrative Charge – Legal costs

   The sum of £2,000 is allocated in respect of potential legal costs. This is a contingency fund in the event of legal costs being incurred. It is not possible to obtain an itemised bill until any cost is actually incurred. This is a comparatively modest amount which is fair and reasonable.

7. Gardening

   The Budget costs for this element are £63,700 of which £18,042 is attributable to the leaseholders. The Applicant raises four complaints on to this aspect namely: a) the costs are disproportionate given that residents have actively participated in maintaining the gardens, b) a lack of a detailed breakdown to justify the expenditure, c) the financial impact on leaseholders d) failure to explore alternative methods and e) failure to consider all relevant factors in determining the service charge.

   The service charge for gardening services is one of the most significant elements of the service charge budget. The Respondent explains that the budget comprises four aspects. The most substantial is grass cutting and ancillary work, (£43,200) which is undertaken fortnightly between late March and early November in each year. The Respondent gives an account of the current gardening contract at page 187 and provides comparative hourly rates for grass cutting services on an adjacent private estate. We are reminded by the Respondent that the estate comprises some 8.6 acres of unbuilt upon land. Maintaining the extensive grounds to a reasonable standard is inevitably a costly exercise. The Applicant's suggestion that the homeowners should volunteer their services to maintain the gardens would inevitably lead to inconsistency in the frequency and standard of the cutting which makes it an impractical and unrealistic suggestion for an estate of this size. Indeed, as pointed out by the Respondent having gardening services provided is one of the attractions of the estate for many property owners.

   Tree maintenance is allocated a budget of £10,000. The provision allows for planned maintenance of £4000 together with an additional contingency for work that may be required following winter storms. In addition, all the trees in the Dockwood area of the estate are subject to a blanket Tree Preservation Orders and consent is required from the Local Authority before any maintenance work can be undertaken. In addition to this being a slow process the Authority may require the Respondent to provide an expert report to justify the proposed work. A quotation for work in this area for £12,000 was obtained in April 2023 and the management company has decided to split the work over two financial years in order to spread

the cost. The first phase was completed in June 2024 and the balance is included in the budget for 2024- 25.

A sum of £500 is allocated for replacement planting of trees and shrubs and an additional £10,000 is allocated for general grounds maintenance and a contractor is engaged for this service which keeps the grounds neat and well maintained and hazard free. The annual cost has previously varied between £8,200 and £9,200. An additional sum of £500 is allocated for replacing trees, shrubs and plants across the estate.

The tribunal is satisfied that the maintenance work undertaken is reasonable as is the budget for such work. There are extensive grounds to be tended which require regular attention especially during the summer months and the overall budget, which at first glance may appear large is fully accounted for and the budget allocated for 2024-25 seems fair and reasonable. Whilst the Applicant makes general observations, she does not provide any evidence or realistic suggestions as to how the gardening work could be undertaken in an alternative more cost-effective manner. The photographs which are contained in the bundle show a neat and tidy estate reflecting the effort that is made to maintaining the garden area. The tribunal is satisfied that the cost of the gardening is a permissible service charge and that the overall budget is justified and reasonable.

8. <u>Site Maintenance</u>

The sum of £14,000 (£3,965 being apportioned to the leaseholders) is allocated to cover the cost of repairing, rebuilding and maintaining the roads, footpaths etc. The roads and pavement are not adopted and accordingly the cost of repair and maintenance falls on the property owners. The Respondent has a plan to repair the footpaths on an incremental basis to spread the cost of repair over a period. This work is allocated £10,000 per annum. In addition, there are 42 flights of steps to be repaired as part of an ongoing repair programme. The Respondents have taken a decision to defer the path replacement programme to reduce the costs to the residents. The Applicant raises concerns about the state and condition of the communal areas, the maintenance of which does not fall under this head of expenditure. The Applicant suggests the sum of £2000 with £566.48 being allocated to the leaseholders, as a reasonable estimate for the budget. This figure is not supported by any evidence or rationale. The certified expenditure for maintenance costs for 2023-24 was £16,851. This figure has not been challenged and the tribunal concludes that the current estimate of £14,000 is fair and reasonable.

9. <u>Property maintenance</u>

The budget of £15,000 under this heading is allocated in its entirety to the 76 leasehold properties. This work covers the communal areas for the flats together with roof maintenance and window and door replacements as well as a painting programme. The total cost for property maintenance in the service charge for 2023-24 amounted to £15,268 therefore the estimate for 2024-25 appears reasonable. The Applicant argues that this heading only covers the painting programme and that the painting work that has been undertaken is not of the requisite standard. She argues that the cost is disproportionately high. In addition,

the Applicant insists that the standard of the maintenance work of the communal areas is unacceptable. The Applicant has produced some photographs, but it is not possible to conclude from these photographs alone that the communal areas are poorly maintained. It is inevitable that there will be some wear and tear to outdoor areas that are exposed to the elements, but the evidence of the Respondents is that there are programmes in place to undertake ongoing maintenance and repair to the properties. It is clear that property maintenance extends well beyond undertaking a painting programme. Given that there is no evidence to the contrary there is no reason not to find that the proposed budget is fair and reasonable. The estimate of £2,000 suggested by the Applicant is not supported by any evidence and is unrealistic given the amount of work likely to be involved. The Applicant complains that she is unable to see any improvement to the estate despite all the purported expenditure. However, the task of the management company is to maintain the estate and such maintenance work means maintain standards and not necessarily improving the facilities. If there was to be a regular upgrading, then the overall cost to the residents would most likely be higher.

10. <u>Sea Wall</u>

The Applicant states the cost of maintain the sea wall is not a legitimate expense as the Lease does not permit the lessors to charge for maintaining the sea wall. The tribunal accepts that there is no explicit reference to the sea wall in the Lease. The Respondent asserts that there is no ambiguity and refers to a specific provision in clause 8 of the Fifth Schedule. The Respondent then quotes from this clause in its response [37]. However, the section is not correctly quoted as the word 'party' has been omitted. The relevant clause has been reproduced previously in this decision and should read, 'The costs of making repairing, rebuilding……. party walls party structures party fences party walls' (the words 'party walls' appear twice). The sea wall is not a party structure and therefore the wording identified by the Respondent does not provide for charging the cost of the repair of the sea wall to the residents. However, it is clear that the sea wall is the boundary of the estate and maintaining the integrity of the structure is essential to maintaining the garden/grassed area of the estate. If the wall were to collapse, then so would the land above, causing extensive erosion. The tribunal finds that therefore that the maintenance of the sea wall is covered by the general provisions of clause 8 of the Fifth Schedule.

The Respondent further argues in the alternative that only the owners of the properties fronting the sea that should be responsible for the maintenance costs of the sea wall on the basis that the potential damage does not affect the properties that are built further away from the sea. Whilst appreciating the point made by the Applicant others could argue that they should not have to be responsible for maintenance of roadways that they never use. It would quite simply not be practical or manageable to apportion service charges only to properties directly affected by the expenditure. It is accepted that the management company has drawn a distinction between the freeholders and the leaseholders when apportioning part of the service charge but that is in a situation whether it is easy to draw the distinction.

The tribunal finds that this is allowable expenditure and the that the budget is reasonable given the complexities of maintaining the wall.

11. T V aerial, cable and CCTV.

The Applicant's argument is that as she does not use the TV cable that she should not therefore be required to pay for the facility. Ms Jones also states that she objects to the CCTV as it is an invasion of her privacy. She further argues that as she was not consulted regarding the original decision to install these facilities she should not be liable for the expenditure.

The management company had provided a TV aerial/satellite dish for each of the leasehold blocks since the construction of the estate. The Respondent states that wherever possible a satellite dish is now installed to serve individual blocks.

The provisions of the Lease allow for providing the TV aerial and cable. In addition, clause 8 of the Fifth Schedule allows the management company to recover 'the cost of ……other conveniences and facilities' provided to the residents'. The installation of the CCTV is a facility installed for the benefit of the residents as a whole and not for individual residents.

The budget for 2024-25 is £1,000.00, which may be optimistic given that the total expenditure in the previous year was £4,316.00. The share attributable to the leaseholders is £283, being a total of £3.72 per flat.

The Applicant's argument that she was not consulted is a non-starter given that she has only owned for flat for around 4 years. The facilities are available to the Applicant, and it is a matter for her whether or not she wishes to avail herself of these benefits. It would be completely impractical and uneconomic to allow individuals to opt out the system.

The budget cost for the TV aerial cable and CCTV is entirely reasonable.

12. Roads drains and bridge

The budget cost is £4,000.00, but the Applicant argues that £1000 is a more realistic sum.

Clause 8 of the Fifth Schedule allows the management company to raise a service charge for road and drain maintenance and repair. The same clause also enables a charge to be made for the provision of other conveniences and facilities.

The roads and surface water drainage on the estate is unadopted and the cost of repair and maintenance falls upon the residents. The Applicant argues that this amounts to no more than minor pothole repairs.

The service charge for this element in 2023-2024 was £173.00.

As explained by the Respondents, the only vehicular access to the estate is over a 125-year-old bascule bridge across the harbour. This bridge does not lie within the curtilage of the estate and is not part of an adopted highway. By virtue of a transfer dated the 14th December 1995 made between Port Dinorwic Yacht Harbour Ltd and Numberpress Ltd, the owners for the time being of the residential estate are obliged to contribute 60% of the cost of maintaining the bascule bridge. However, the company that owns the harbour and the bridge has fallen into administration and in recent years the upkeep of the bridge has been neglected. Given that no contribution has been made towards the upkeep of the bridge for some years it is

prudent to make some allowance for potential demands that could now be received.

Major renovation works are due to be undertaken on the bridge which will be paid for by the Respondents through the reserve fund.

A budget of £4000 to cover repairs to roads, drains and the bridge is reasonable.

13. Uplift costs

The Lease contains an equation for calculating the service charge for each leasehold unit. It provides for an uplift of 10%. The uplift for the freeholders is 20%. The uplift allows for the management company to build up a fund to cover unexpected expenses. As pointed out by the Respondents, as the management company is a not-for-profit company wholly owned by the residents any overpayment can be provided for in the final service charge certificate for 2024-25 with adjustments made accordingly.

The Respondents are entitled to claim the uplift in accordance with the terms of the Lease and it is reasonable in amount being £8,820 between 76 leaseholders.

14. Project fund

This is a reserve fund of £154,000 to cover the costs of ongoing extensive repairs to the leasehold properties to be undertaken over the next few years. We are told by the Respondents that consultations in accordance with section 20 of the Act were undertaken between November 206 and April 2017. There is no documentary evidence to support this assertion but that is not relevant for the purposes of this decision. The leaseholders have contributed an annual sum of £110,550 from 2016 until 2024. Following the AGM in November 2023 the leaseholders agreed to raise their total contribution to the project fund to £154,700. This increased contribution reflects the increase in construction costs and the likely cost of completing the refurbishment project. One benefit of increasing the amount is to reduce the timescale for the completion of the work. Given that this is a contribution to a reserve fund then a consultation under s20 is not triggered at this stage although it may be an issue that the Respondent will need to consider in due course. It is prudent to build a reserve fund to avoid burdening the leaseholders with a heavy financial demand when the work is actually done. The Lease allows the management company to request a contribution in advance and on account of the service charge, the sum requested being at the discretion of the management company. The budget sum is reasonable in the circumstances. The tribunal notes that the Applicant has not attended any AGM's during the period of her ownership. The Applicant hasn't produced any evidence that this budget is unreasonable.

15. Reserve fund

The budget sum is £3,800 which equates to £50.00 per leaseholder. As indicated in the previous paragraph, the Lease allows the management company to request money in advance and on account of the service charge. It is prudent estate management to ensure that there is a reserve sinking fund to cater for unexpected or emergency expenses. It is not necessary to show planned expenditure or to earmark the fund for a particular project. In this instance the Respondent provides

examples of potential areas of expenditure where it has not been possible to obtain insurance cover for the risk of damage to the sea wall, the retaining wall adjacent to the harbour and the bascule bridge. As highlighted by Ms Jones the management company is already raising specific sums to repair and maintain those structures mentioned but the tribunal accepts that there may be additional expenditure on these structures and on other mattes within the responsibility of the management company which will exceed the sums which have been budgeted for in the interim service charge. The tribunal is satisfied that the management company is entitled to raise funds on account to be able to deal with unforeseen expenditure and that the sum raised is reasonable in all the circumstances.

22. Having regard to the above the tribunal therefore finds that the management company is permitted by the terms of the Lease to collect an interim service charge in respect of each matter referred to in the service charge budget and that the sums claimed are reasonable in the circumstances. The application by Ms Jones therefore fails and she may reflect that a challenge to an interim account at this stage was premature.

23. The only other issue to consider is whether or not an order should be made under s20C of the Act. Given our findings, the tribunal is not minded to make such an order subject to any submissions that the Applicant may wish to make. If no order is made, then the Respondent can recover the costs of these proceedings through the service charge. As the parties were not given the opportunity to address the issue during the tribunal hearing then they are invited (if they so wish) to make written submissions in relation to s20C of the Act only within 10 days of the date of this decision.

Dated this 19th day of December 2024

Tribunal Judge Gwyn E Davies