

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0033/04/12

In the Matter of 28 Penmorfa, North Road, Aberystwyth, Ceredigion SY23 2EP

In the matter of an Application under Section 27A of the Landlord & Tenant Act 1985

TRIBUNAL Andrew Morris LLB - Chairman  
D Rhys Davies FRICS  
David O Evans FRICS

APPLICANT Iain Kempton

RESPONDENT Tai Ceredigion Housing Association

ORDER

We were duly convened as a Leasehold Valuation Tribunal at Penmorfa, North Road, Aberystwyth on 5<sup>th</sup> March 2013. We had before us an application by Mr Kempton the Lessee of No 28 to determine the reasonableness of the service charge in respect of the subject property. In the course of correspondence it became apparent that the only issue in dispute was the cost of the Communal Lighting in particular that relating to the undercroft parking area. The parties confirmed that they were happy for the matter to be dealt with by way of written representations. In addition to the application and a copy of the Lease we had copies of various correspondence between the parties and letters to the Tribunal from both parties setting out their cases.

Penmorfa is a purpose built block of flats not far from the town centre originally built by the Local Authority and subsequently transferred to the Respondent. It is built on five floors on sloping ground so that at street level one accesses the first floor at the front of the building but at the rear (accessed by ramps at each end of the building) is an undercroft which includes parking. There are 2 floors of flats and above that maisonettes on the 3<sup>rd</sup> and 4<sup>th</sup> floor of the accommodation, No 28 is one of these maisonettes. Importantly No 28 did not have the ownership of one of the car parking spaces.

In short the Applicants case was that the lighting of the car park area should not be a charge that he should have to pay as he did not own a car parking space.

We inspected the common parts of the building in particular the undercroft. The area was open to the rear and could be accessed via the ramps or via the lift which served each floor. In practice it could also be accessed via the central fire escape stairs but only as an exit from the building.

Besides car parking spaces each of the Lessees had a small storage cupboard/shed which could only be accessed via the undercroft. There were also two bin stores, a laundry and workshop in the undercroft for the use of the Lessees and Tenants. On each floor except the top floor there were communal hallways and in addition to the central stairwell stairs at either end of the building.

As the central issue was the lighting of the undercroft we deliberately counted the light fittings and it was agreed by Mr Kempton and the Representatives of the Respondent that including 4 outside lights to the sides and rear, the lights in the laundry, the workshop and the bin stores there were 56 lights serving the undercroft and its environs. There were 37 in the actual car park area.

The subject property is held under a lease dated 16<sup>th</sup> October 1989 for the term of 125 years from 24<sup>th</sup> June 1985 at a yearly rent of £10. In addition there is provision for a service charge to be paid half yearly in advance. The second schedule of the Lease sets out the rights which the Lessees have to use the common parts including the lift and to use the shed, the laundry and the bin stores.

Paragraph 2 of Schedule 6 to the Lease sets out costs which are to be included in the Service Charge including "lighting the passages, landings, windows, staircases, lifts and other parts of the building or land adjoining the building enjoyed or used by the Lessees in common with others ....."

It became apparent from our inspection that each Lessee including the Applicant would have to use the undercroft to access the bin stores and sheds there was no other way to access them. The fact that the Applicant did not have a parking space in the undercroft did not in our view derogate from his obligations under the terms of the lease.

We find that the Respondent is obliged to light the common parts including the undercroft. Not to do so would put Lessees at risk and be in breach of their obligations under the Lease. We find that the Lessee is obliged to pay his proportion of this lighting under the terms of the Lease. We find the costs reasonable and payable.

In consequence we do not allow the Applicants application under S.20C in respect of the costs of these proceedings. In fact we find that the Respondent had gone to considerable efforts to resolve the matter to no avail. Further we do not find that the Respondents should refund the Application fee.

DATED this 22nd day of March 2013

A handwritten signature in black ink, consisting of a series of loops and a horizontal line at the end.

CHAIRMAN