

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0073/03/17

In the Matter of Flats at Dock Chapel, Embankment Road, Llanelli,  
Carmarthenshire SA15 2BT

In the Matter of an Application to appoint a manager under Section 27A and  
Section 19 of the Landlord and Tenant Act 1985

APPLICANT            Garmoor Investments Limited

RESPONDENTS      Sharon Lewis (1)  
                            Mr M P J Shepherd c/o Aberdein Considine (2)  
                            Wayne Anthony Stevens (3)  
                            The Estate of Mr C Laidlaw (4)  
                            Sushil Kantibhai Patel (5)  
                            Dershan Sushil Patel (6)

ORDER

1. Pursuant to Rule 18(7) of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, the Tribunal's determination and reasons dated 19<sup>th</sup> September 2017 ('the Original Determination') are amended as shown in the determination annexed to this Order ('the Amended Determination').
2. The Amended Determination replaces the Original Determination with immediate effect.

REASONS

1. In error, the Original Determination referred to the Applicant as Glanmoor Investments Limited rather than Garmoor Investments Limited. This was an accidental, administrative slip, which the Tribunal rectified of its own volition pursuant to its procedural powers. The amendments do not change the substantive findings or rulings of the Tribunal's Original Determination. Rather, they simply record accurately the Applicant's name.

DATED 9<sup>th</sup> October 2017



CHAIRMAN

**Y TRIBIWNLYS EIDDO PRESWYL**  
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Reference: LVT/0073/03/17

In the Matter of Flats at Dock Chapel, Embankment Road, Llanelli,  
Carmarthenshire SA15 2BT

In the Matter of an Application under Sections 27A and 20C of the Landlord and  
Tenant Act 1985

TRIBUNAL            Mr S Povey  
                          Mr P Tompkinson  
                          Mrs C Calvin

APPLICANT           Garmore Investments Limited

RESPONDENTS      Sharon Lewis (1)  
                          Mr M P J Shepherd c/o Aberdeen Considine (2)  
                          Wayne Anthony Stevens (3)  
                          The Estate of Mr C Laidlaw (4)  
                          Sushil Kantibhai Patel (5)  
                          Dershan Sushil Patel (6)

**DECISION**

1. The name of the Applicant is amended from Residential Facilities Management Limited to Garmore Investments Limited.
2. The service charges demanded by Garmore Investments Limited between November 2015 and April 2017 relate to works and services which were reasonably required and the sums charged are similarly reasonable.
3. The proposed service charges for the period from May 2017 to April 2018 demanded by Garmore Investments Limited relate to works and services which were reasonably required and the sums charged are similarly reasonable.

4. Mr Patel's application under Section 20C of the Landlord & Tenant Act 1985 is refused.

## **REASONS FOR THE DECISION**

### **Background**

1. The Applicant, Garmore Investments Limited ('the Freeholder') is the freehold owner of Dock Chapel ('the Property'), which it acquired in November 2015. The Property is a converted chapel containing eight separate flats. The Respondents were at the relevant time the leaseholders of the flats ('the Leaseholders') under identical leases granting a 125-year term from various start dates ('the Lease').
2. On or around 16<sup>th</sup> March 2017, the Freeholder applied to the Leasehold Valuation Tribunal ('the Tribunal') under section 27A of the Landlord & Tenant Act 1985 ('L&T Act 1985') for a determination of the reasonableness of the service charges demanded between November 2015 and April 2017 and those to be demanded between May 2017 and April 2018.
3. Case management directions were issued by the Tribunal on 6<sup>th</sup> April 2017, affording the Leaseholders an opportunity to respond to the Freeholder's application. Responses were only received from three of the Leaseholders.
4. Mr S. Patel, the Fifth Respondent and Mr D. Patel, the Sixth Respondent submitted a joint letter dated 4<sup>th</sup> June 2017, a witness statement by Mr S. Patel and several photographs, objecting to aspects of the aforesaid service charges. At the time, Mr S Patel was the leaseholder of Flats 5 and 8. Mr D Patel (his son) was the leaseholder of Flats 6 and 7. They both sold their leasehold interests in the Property on 23<sup>rd</sup> June 2017.
5. The Tribunal also received a letter dated 9<sup>th</sup> May 2017 from Belinda Laidlaw, Executor of the Fourth Respondent. It stated that all outstanding service charges had been paid, a fact confirmed by the Freeholder at the subsequent hearing of this matter.

### **The Inspection & Hearing**

6. The Tribunal inspected the Property on 15<sup>th</sup> August 2017, in the presence of Wayne Rodriguez from Residential Facilities Management Limited ('the Managing Agents') and Cassandra Zanelli of PM Legal Services Limited, the

Freeholder's solicitors. The hearing followed at the Strady Park Hotel in Llanelli, which was also attended by Mr S Patel ('Mr Patel') and his wife. With the Tribunal's consent, Mr Patel represented both himself and his son at the hearing.

7. We were provided with a paginated bundle of documents, to which we were referred throughout the hearing. Further accounts were adduced by the Applicant during the hearing and it was agreed that all these documents could be considered by the Tribunal.
8. As a preliminary issue, it was also agreed that the Applicant's name (which had originally been erroneously recorded as that of the Managing Agents) be amended to that of the Freeholder.
9. The Tribunal invited submissions from all those present at the hearing. The Tribunal was conscious that Mr Patel was representing himself. Throughout the hearing, we encouraged him to ask questions, checked his understanding, explained procedure and law, made sure he understood the Freeholder's case and asked him questions to bring out the salient aspects of his own case. We were satisfied that, notwithstanding acting in person, Mr Patel was able to present his case and was afforded a fair hearing.

### **Relevant Law**

10. Section 19 of the L&T Act 1985 imposes a requirement that expenditure that is sought to be recovered by way of a service charge is reasonable. Such expenditure can only be recovered to the extent that it has been reasonably incurred and, where the expenditure relates to works or services, where those works or services are reasonably required and of a reasonable standard.
11. By virtue of section 27A of the L&T Act 1985, the Tribunal has the power, upon application, to determine whether, if costs were incurred for repairs and maintenance, a service charge is payable for those costs and, if it is, the amount which is payable. Specifically, section 27A(3) permits an application to the Tribunal where costs have yet to be incurred but to determine whether a service charge would be payable if those costs were incurred in the future (and the amount payable). In determining the amount payable, the Tribunal will apply the provisions of section 19 of the L&T Act 1985 as to reasonableness (set out at Paragraph 10, above).
12. Section 20C of the L&T Act 1985 gives the Tribunal, upon application, the power to determine whether all or any of the legal costs incurred by the

Freeholder in connection with these proceedings can be included in current or future service charges and payable by the Leaseholders. The Tribunal may only prevent or limit such a recovery of costs if the same is not permitted by the lease or, where the lease does permit recovery, where it is just and equitable to prevent or limit recovery.

### **The Property**

13. The property is a detached former chapel converted around 2007 into residential flats. The property has exposed stone elevations with modern porches and porticos fitted. The property sits under a dual pitched slated roof. Fenestration has been replaced in double glazed plastic units. The building is bounded by stone walling and bank work laid to shrub borders and grass. A tar macadam hardstanding provides a circulation area and parking for the flats. The property is divided into eight units on four floors off two enclosed stairwells.

### **The Matters in Dispute**

14. The parties agreed that the following issues required determination by the Tribunal:

14.1. The reasonableness of a number of costs incurred and charged under the service charges for the period from November 2015 up to April 2017;

14.2. The proposed amounts payable by the Leaseholders for the period from May 2017 to April 2018;

14.3. Whether the leaseholders of Flats 5 to 8 inclusive are liable under their leases for the work undertaken to the entrance to Flats 1 to 4;

14.4. The application by Mr Patel under section 20C of the L&T Act 1985.

### **The Tribunal's Decision**

15. Mr Patel relied upon the letter he wrote to the Tribunal dated 4<sup>th</sup> June 2017 as the template for his objections to the service charges. During the hearing, the Tribunal invited Mr Patel's further submissions on each of the points raised in his letter and afforded the Freeholder an opportunity to respond to each.

16. Having regard to the evidence we have seen and heard, the Tribunal has reached the following conclusions on the issues before us.

### **The Reasonableness of the November 2015 to April 2017 Service Charges**

17. In respect of the objections raised by Mr Patel, the Tribunal made the following findings.

#### Repairs, gardening, litter picking and cleaning

18. Mr Patel claimed that his tenant of Flat 5 had complained about rising damp, which had not been addressed by the Freeholder. However, the Tribunal was provided with no further evidence regarding this allegation (either from the tenant or Mr Patel), had not had sight of the claimed damp during our inspection, no evidence that it had been reported to the Freeholder or should reasonably have come to its attention and had no evidence from which to conclude the cause of the alleged damp. To that end, we were unable to find who was liable to address any such damp (whether the Freeholder, Mr Patel as landlord or the tenant himself) and, specifically, that the same did not in any way render the aspect of the service charge pertaining to repair of the block unreasonable.

19. The Freeholder entered into a contract with Finishing Touches Cleaning Ltd ('Finishing Touches') to provide regular cleaning, gardening and litter picking services to the Property. In the Tribunal's judgment, it was reasonable for the Freeholder to introduce these services, given the size and layout of the property. The Tribunal also found that the Freeholder undertook a competitive and open tendering process for each contract (for cleaning, gardening and litter picking). Finishing Touches successfully submitted the cheapest tenders for each contract and was awarded the contracts. Despite Mr Patel's suspicions, there was no evidence of any prior relationship between the Freeholder, the Managing Agent and Finishing Touches. The tender process was robust and produced competitive, market-driven prices for each service. We therefore found that those aspects of the service charge were both reasonably incurred and involved reasonable costs.

#### The Managing Agents

20. Mr Patel took issue with the charges levied by the Managing Agents and included in the service charge. He claimed that they were ineffective and constituted a waste of money. The charges equated to £160 per flat per

year. When Mr Patel was the freeholder, he managed the Property himself for a lower amount.

21. It was, in our judgment, reasonable for the Freeholder to engage the services of the Managing Agents. The Lease permits it. The Freeholder is based in Hertfordshire. The Managing Agents are based in London. It was not challenged by Mr Patel that the Freeholder had initially sought to engage agents in the locality of the Property but found them to be prohibitively expensive.

22. We found the charges levied by the Managing Agents to be reasonable, given the size of the Property and the services being provided. They are professional managing agents, with the costs and expertise that would be reasonably expected. Whilst their costs are higher than those levied by Mr Patel in the past, we did not find them unreasonable.

#### The Reserve Fund

23. Mr Patel contended that having a reserve fund and including it in the service charge was unnecessary and unreasonable. No such fund had existed when he was the freeholder.

24. The Tribunal was unable to agree with Mr Patel's submission. Given the age and size of the Property, it was, in our view, entirely reasonable for the Freeholder to set up a reserve fund, as a means of spreading the cost of significant future works. As highlighted by Ms Zanelli, the RICS Code recommends reserve funds for that same reason. Indeed, had a reserve fund been set up in the past, it would have gone some way to mitigate the current costs being expended on repairing the Property.

25. We also found that the required contribution from each leaseholder of approximately £183 per year to also be reasonable, again given the age and size of the Property.

#### Fire & Asbestos Reports

26. The interim service charge for 2016/17 included charges for fire risk and asbestos reports on the Property. Those same items appear in the 2017/18 figures. Mr Patel objected to their inclusion on two occasions in consecutive years, reasonably claiming that such reports were not required on an annual basis.

27. However, further exploration of the figures during the hearing provided an answer with which Mr Patel concurred. The costs of the reports were included in the 2016/17 service charges as a budget item. They were not charged against the Leaseholders as no reports were commissioned during that financial year. As such, the budget item has simply been replicated in the 2017/18 charge, as no sums can be expended unless items are included as a budget item in advance.

28. It follows that the Leaseholders have not been charged twice for the reports. No charges at all have been levied because the reports have yet to be commissioned. When they are, they will be included in the service charge and, for the avoidance of doubt, the Tribunal finds that commissioning reports this building to be eminently reasonable. However, we pass no view on the costs of those reports, as the charges have yet to be incurred.

#### The Accro Props

29. Work was carried out to replace the porch over the communal entrance to Flats 1 to 4. The costs of that work were included in the service charge for 2016/17. Mr Patel objected to those costs being recovered at all from the leaseholders of Flats 5 to 8 (which is explored further, below). In the alternative, he questioned the reasonableness of the charges incurred in hiring accro props during the porch works.

30. Given the nature of the work undertaken, the Tribunal's expert view was that accro props were not only reasonable but necessary (to provide support whilst the old porch was removed and new one erected). The evidence recorded that the props were hired for the duration that the Property required support and for the work (six months). Again, the Tribunal found this period reasonable. The props were required for health and safety reasons and six months was a reasonable time frame in which to organise and undertake the work (especially as it spanned the winter period when poor weather and less daylight would have hampered progress).

31. During the hire period, one of the props was stolen from the site. This necessitated a further charge to the hire company and the inclusion of a monitoring charge to minimise further thefts. We found these charges reasonable in the circumstances.

#### Communal Electricity Charges

32. Mr Patel objected to the figures claimed in respect of the communal electricity charges. He cited the accounts which evidenced fluctuating



monthly figures. The Tribunal were given no reason to doubt that the figures were what was being charged to the Freeholder. The issue for us to consider was whether those sums were reasonable.

33. The Tribunal did not find the figures excessive. They related to communal lighting across all floors and stairwells, on both sides of the Property. It was reasonable for the Property to have communal lighting and the amounts incurred were reasonable. The annual figure was not £608.22, as claimed by Mr Patel in his letter of 4<sup>th</sup> June 2017. That figure covered the 17-month period from 3<sup>rd</sup> December 2015 to 1<sup>st</sup> May 2017, which equated to an actual annual figure in the region of £475 (or £60 per leaseholder per year).

### Conclusion

34. In respect of all the objections raised by Mr Patel, we found that the charges were reasonable to incur and the amounts being incurred were also reasonable for the purposes of Section 19 of the L&T Act 1985. No other objections were raised, either by Mr Patel (and by extension, his son) or any other leaseholder. We therefore had no basis upon which to alter the service charges for the period from November 2015 to April 2017 and we upheld them as charged.

### **The Reasonableness of the Proposed 2017/18 Service Charges**

35. Mr Patel only raised one issue regarding the proposed 2017/18 charges, which related to window cleaning. However, this was again resolved during the hearing when it became clear that the figure quoted in the 2017/18 accounts was an annual charge (which Mr Patel accepted was reasonable), not a quarterly charge (as he had originally believed).

36. In the absence of any other objections to the reasonableness of the 2017/18 service charges, the Tribunal had no reason not to find that the same were reasonable for the purposes of Section 19 of the L&T Act 1985.

### **Replacement of Porch**

37. As detailed above, Mr Patel questioned whether the leaseholders of Flats 5 to 8 should be liable for the charges incurred in replacing the porch to the communal entrance for Flats 1 to 4.

38. In the course of the Tribunal hearing, Mr Patel appeared to accept that all the leases, including his own, entitle the Freeholder to recover the costs of such work equally from all eight leaseholders through the service charge

irrespective of the location of or benefit derived from the same. The Tribunal reached the same conclusion. The Lease permits recovery and the Freeholder has acted in accordance with it.

39. In addition, given the cost of the work, the Freeholder would have had to comply with the statutory consultation procedure prior to undertaking the work and incurring any costs. It was not suggested to us that that procedure was not followed, the purpose of which is to allow the Leaseholders the opportunity to engage in and comment upon the proposed work and likely costs.

40. It was not suggested to us by Mr Patel or any of the other leaseholders that the work to replace the porch was not reasonably required. The amount charged for replacing the porch appeared reasonable to the Tribunal, a conclusion reinforced by the Freeholder's apparent compliance with the statutory consultation process.

41. We therefore found that the Freeholder was entitled to recover the costs of replacing the porch equally from all eight leaseholders, that the work was reasonably required and the cost claimed similarly reasonable.

### **Ability to Pay and Record Keeping**

42. Mr Patel also raised concerns regarding the Leaseholders' ability to pay the current and future service charges. As we explained at the hearing, such matters are outside the remit of the Tribunal's powers under Sections 27A or 19 of the L&T Act 1985. The sole matter we are permitted to adjudicate upon is whether the services to which the charges relate have been reasonably incurred and whether the amounts charged are in themselves reasonable.

43. Mr Patel raised a number of allegations regarding the Freeholder and/or the Managing Agent's record keeping. As we explained, these were matters which were similarly outside of the Tribunal's jurisdiction in themselves and were not matters on the facts of this case which went to the reasonableness of the claimed service charges.

44. As such, neither issue was material to our conclusions.

### **Section 20C Application**

45. Mr Patel originally indicated in his letter of 4<sup>th</sup> June 2017 that he wished to rely upon the protection afforded by section 20C of the L&T 1985 in respect of the recovery of the Freeholder's legal costs of these proceedings. It was

not in dispute that the Lease permits the recovery of such costs from the Leaseholders via the service charge. However, in the course of the oral hearing and upon further examination of the documentation, it became clear that the only costs being recovered in the current service charge were the Tribunal fee and the Managing Agent's additional costs of preparing the Tribunal applications. The bulk of the legal costs incurred (arising from the instruction of and representation by solicitors) are to be included in future service charge demands (as the Freeholder is yet to receive any bill of costs from its solicitors).

46. Upon further consideration of the contract between the Freeholder and the Managing Agent (which permitted additional charges to be levied for such work), the work undertaken and hourly rate charged, Mr Patel conceded that the amounts being recovered were reasonable.

47. The Tribunal agreed and we do not find that it would be appropriate to interfere with the Lease and prevent the Freeholder seeking to recover its legal costs by way of the service charge. For those reasons, Mr Patel's application under section 20C of the L&T 1985 is refused.

48. Mr Patel and his son have now sold their leasehold interests in the Property. They will not be liable for any costs recovered via future service charges. How much of those costs and from whom the Freeholder will be entitled to recover in the future is a matter which the Leaseholders have the right to challenge (by reason of Section 19 L&T Act 1985) as and when the demand for payment is made through the service charge. This would appear to be particularly pertinent for the leaseholder of Flat 4 who by common consent paid all the services charges demanded as and when they fell to be paid and has taken no part in these proceedings.

## **Conclusion**

49. For all those reasons, the Tribunal finds that the services and works claimed or proposed by the Freeholder were and are reasonably required. We further find that the demands made of the Leaseholder via the service charge to contribute to the costs of those works and services was and is similarly reasonable.

50. In addition, Mr Patel's application under Section 20C of the L&T Act 1985 is dismissed for the reasons set out above.

A handwritten signature in black ink, appearing to read 'Stephen Povey', with a horizontal line underneath.

Stephen Povey

Chairman

19<sup>th</sup> September 2017

Amended 9<sup>th</sup> October 2017