

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0003/04/14

In the Matter of Flat 3, 2 Abergele Road, Colwyn Bay, LL29 7NR

In the matter of an Application pursuant to S27A of the Landlord & Tenant Act 1985

TRIBUNAL: J D M Jones Chair  
Colin Williams FRICS

APPLICANT Jones Lang Laselle

RESPONDENTS Harwood Properties Ltd

DATE OF HEARING: 14<sup>th</sup> October 2014

ORDER

The Application

1. An application dated 4th March 2014 under S27A of the Landlord & Tenant Act 1985 was made by Jones Lang Laselle, managing agents for the receivers of Enduring Properties (Jersey) LP (The Landlord) seeking a determination of the insurance premium recoverable as part of the service charges for the years

25th December 2009 to 24th December 2010  
25th December 2010 to 24th December 2011  
25th December 2011 to 24th December 2012  
25th December 2012 to 24th December 2013  
25th December 2013 to 24th December 2014

in respect of Flat 3, 2 Abergele Road, Colwyn Bay (The Property). The Respondent is Harwood Properties Ltd (The Respondent).

2. The Property is subject to a lease (the Lease) dated 24th June 2003 made between National Westminster Bank Plc (1) and the Respondent (2). The Lease is for a term of 125 years from 24th June 2003 and it provides (inter alia) for payment by the Tenant of a service rent calculated in accordance with the provisions of Schedule 4 of the Lease
3. By Clause 2.1 of The Lease, the Tenant agreed to pay the Basic Rent and the Service Rent as defined in the Lease and in addition the sums the Landlord spends each year during the term of The Lease to insure the Property as required by the Lease.
4. Clause 4.2 of the Lease provides that the Landlord shall insure The Building (as defined in the Lease) under a policy which satisfies the conditions set out in Clause 4.2.2 thereof. Clause

4.2.2.1 provides that the "Insured Risks" include fire, lightning, explosion, riot, civil commotion, aircraft, aerial devices, storm, flood, impact by vehicles and damage by malicious persons and vandals and other risks which the Landlord from time to time reasonably considers should be covered

5. In addition it provides that the sum insured shall be the full rebuilding cost plus professional fees and three years loss of rent and the policy shall be issued by a reputable insurance office.
6. The Inspection. The Property was inspected from the outside (front and rear) on the morning of 14th October 2014. It is located in the centre of Colwyn Bay in Abergele Road, the main street, opposite to Station Road. It is a four storey stone faced structure with a slate roof. Access could not be gained to the Property as there was no response from the occupier. However we had been supplied with a layout plan and we could observe from the outside the extent of the Property within the Building. The ground floor of the Building is occupied by the National Westminster Bank and the upper floors have been let as residential flats. The Property is on the top floor of the Building. Access is gained through a secure door entry system. The main structure and roof of the Building appear to be in good repair and condition.

#### The Hearing

7. The Hearing took place at The Interchange 317-319 Abergele Road, Colwyn Bay on 14th October 2014. The Applicant was represented by Mr David Griffin Lead Director of Jones Lang Laselle, and the Respondent was represented by Mr Daniel Parkinson
8. The parties representatives agreed that the hearing should proceed notwithstanding that the Tribunal had not been able to gain access to The Property to inspect the interior.
9. Mr Griffin said that his company acts for the receivers of the original tenant. They manage a large portfolio of RBS properties across the UK, and the properties are a mix of commercial property mainly on the ground floor with residential units above. The portfolio comprises about 160 properties.

He said that Jones Lang Laselle instructed Mulberry Insurance Services (Mulberry) to advise on insurance of the portfolio of property when they took over its management. They did this by obtaining competitive quotations from reputable insurance companies.

10. Mr Neil Holloway of Mulberry said in evidence that his company was instructed to do due diligence inquiries to ensure that the Landlord complied with its insurance obligations in the Lease and then to arrange appropriate cover. He expressed the opinion that the previous cover did not comply with the insurance covenant in the Lease.
11. He said that care was taken to ensure that the Landlord's requirements for insurance cover were all met and that the cover offered was specific to the Landlord's requirements and complied with the covenants in the Lease. He confirmed in evidence that owing to the history of the matter it was not possible to provide a detailed claims history and the premium offered was the best which could reasonably be obtained in the market at that time and which provided the cover required by the Lease. It was said that in the past the National Westminster Bank had self insured and there was no evidence of an insurance track record.

12. Mr Holloway said he had reviewed the new quotation with the Tenant but no explanation was given by the Tenant as to why the Tenant considered the premium was not competitive. He expressed the opinion that the alternative quotation obtained by the Tenant was not for "like for like" cover and had been obtained only as a "desktop" exercise without details of the requirements of the lease being provided to the brokers.
13. The Landlord's evidence was that the Property comprised 12.95 per cent of the floor area of the Building and that this was the proportion used in relation to the part of the insurance premium allocated to the Property. There was no weighting of the insurance premium in regard to the commercial part of the Building
14. The insured value of The Building was said in evidence to be £1.43 million being the reinstatement value. This sum was said in evidence to have been carefully reviewed by the Landlord's building surveyors' department and they were satisfied that the correct level of insurance cover had been achieved. This had been done in 2010 and had been indexed as shown in the Schedule. The insurance had been placed with Great Lakes, the UK arm of the Munich Re Group.
15. Mr Griffin confirmed that the premium for the period 25th December 2013 to 24th December 2014 in the sum of £341.09 had been paid by the Tenant and was not now in dispute and was not to be considered by the Tribunal.
16. Accordingly the Tribunal was now asked to consider the insurance premiums claimed for the following years:

25th December 2009 to 24th December 2010 (after agreed adjustment)	£ 582.34
25th December 2010 to 24th December 2011	£ 782.72
25th December 2011 to 24th December 2012	£ 806.24
25th December 2012 to 24th December 2013 (after agreed adjustment)	£ 421.69
Total	£2592.99

17. On behalf of the Respondent Mr Parkinson said his company managed about two thousand properties. It was acknowledged that the Lease provided that the Landlord covenanted to insure the Building; that the Lease identified the risks to be covered and that the Tenant was required to pay as rent the sums the Landlord spends each year during the term of the Lease to insure the Property as required by the Lease. He said that what was in dispute was the amount of the premium recoverable, not whether it was recoverable at all. The Respondent considered that amount claimed by the Landlord was in excess of the premium which could be obtained in the market and that it was not reasonable to require the Tenant to pay the sums demanded.
18. Mr Parkinson referred to the statement filed by Mr M Clarke-Walker the Financial Controller of the Respondent, the statement was dated 29th July 2014 and set out the Respondent's case and reasons for disputing the Applicant's claim. He referred to lengthy correspondence regarding the issue of insurance which had passed between the parties and confirmed that the Respondent was looking to pay what was reasonable and fair.

19. Mr Parkinson confirmed that the premium for the period from 25th. December 2013 to 24th December 2014 had been paid as the Respondent considered it to be reasonable.

#### The Decision

20. This is an application made under S 27A of the Landlord and Tenant Act 1985 in which the Tribunal is required to consider :

- (1) whether the service charge is due at common law
- (2) are the service charges reasonable whether under S19 of the Landlord & Tenant Act 1985 or at common law?
- (3) is there a statutory bar to recovery?
- (4) that the relevant costs were reasonably incurred

The Tribunal further has to decide

- (1) the person by whom the charge is payable
- (2) the person to whom it is payable
- (3) the amount which is payable
- (4) the date at or by which it is payable and
- (5) the manner in which it is payable

21. By clause 2.1.2 of the Lease the Tenant agrees to pay as rent the sums the Landlord spends each year during the term to insure the Property as required by the Lease

22. By clause 4 of the Lease the Landlord covenants:

- 4.2.1 To insure the Building and all additions to the Property of which the Tenant notifies the Landlord under a policy which satisfies the conditions set out below
- 4.2.2 The conditions with which an insurance policy must comply are:-
  - 4.2.2.1 Cover is provided against the following risks (Insured Risks) so far as that cover is generally available for that type of building:  
Fire, lightning, explosion, earthquake, riot, civil commotion, aircraft, aerial devices, storm, flood, impact by vehicles and damage by malicious persons and vandals and other risks which the Landlord from time to time reasonably considers should be covered
  - 4.2.2.2 the sum insured is at least the full rebuilding cost of The Building and any additions to it which should be insured plus an appropriate percentage for professional fees and three years loss of rent.
  - 4.2.2.3 the policy is issued by a reputable insurance office .

23. Schedule 4 of the Lease sets out details of the services provided by the Landlord. The Tribunal has not addressed these in detail as the parties have made it clear in their submissions that the only issue for the Tribunal to consider is in regard to the level of insurance premiums due to be paid.

24. The Landlord's evidence is that there was no claims record initially on which an insurer could assess a reduction in the premium payable. We heard evidence from Mr Holloway of Mulberry regarding the process adopted in obtaining a quotation for cover. It was said by him that as an insurance record had now been built up it had been possible to obtain cheaper cover to the extent that for the year from 25th December 2013 to 24th December 2014 the premium was acceptable to the Tenant and had been paid by the Tenant.
25. The Respondent produced some alternative quotations for insurance cover but could not provide detailed information which had been given to the brokers, and it is not clear whether the quotations obtained by the Respondent were for cover in respect of all the risks identified in the Lease.
26. The Applicant gave evidence that the insured value of the Property and the Building had been considered by its in house building surveyors' department. The Building was valued at £1.43 million. This value was not challenged and appears to be reasonable.
27. The Lease contains a covenant that the Landlord insure the Building (see clause 4.2) and the issue for this Tribunal is whether the insurance costs were reasonably incurred in accordance with the requirements of the Lease. The Building had been valued by the Applicant's in house surveyors' department and that valuation had been used for insurance purposes and index linked for subsequent years. There was unchallenged evidence that the cover arranged complied with the requirements of the Lease. This Tribunal is required to decide whether the insurance charges were reasonably incurred.
28. We were directed to alternative quotations obtained by the Respondent. However it was not clear from the evidence whether the quotation was for the precise cover required by the Lease. It was suggested on behalf of the Applicant (and not challenged) that the quotation was "a desk top exercise" which did not provide the cover required by the Lease.
29. We consider that the Landlord complied with the requirements of the Lease by obtaining cover from an insurer of repute. It offered what we consider to be a reasonable explanation for a higher premium than might have been expected as there was no evidence of a claims history which could be put to the proposed insurer.
30. The evidence is that now a claims history has been built up it has been possible to negotiate a reduced premium (which for the year 25th December 2013 to 24th December 2014 has proved acceptable to The Tenant).
31. We do not consider it reasonable that the Landlord should be required to "shop around" for the cheapest cover, or indeed to take the lowest quote on offer. We consider that the Landlord has satisfied the requirements of the Lease by acting reasonably in obtaining an arms length quotation from an insurer of repute acting in the normal course of business. On the evidence the rate charged does not appear to be unrepresentative of the market.

32. We are satisfied that the costs were reasonably incurred and accordingly on the evidence we find that in respect of each of the years 2009/10 to 2012/13

- (1) The insurance premium is payable by the Respondent
- (2) The insurance premium is payable by the Applicant
- (3) The amounts payable are as follows:

25th December 2009 to 24th December 2010	£ 582.34
25th December 2010 to 24th December 2011	£ 782.72
25th December 2011 to 24th December 2012	£ 806.24
25th December 2012 to 24th December 2013	£ 421.69
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total	£2592.99
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- (4) The date at or on which it is payable is within 28 days of this decision
- (5) The manner in which it is payable is by cheque by The Respondent to The Applicant

33. No application was made under S20C of The Landlord & Tenant Act 1985

DATED this 20<sup>th</sup> day of November 2014



CHAIRMAN

### Flat 3 2 Abergele Road Colwyn Bay

	Premium for year	Re-build whole building	Percentage re Flat 3	Insurance re-build Flat 3
2009/2010	759.92	1433000	12.95%	185573
2010/2011	782.72	1476000	12.95%	191142
2011/2012	806.24	1506000	12.95%	195027
2012/2013	421.69	1536000	12.95%	198912
2013/2014	341.09	1862650	12.95%	241939
	3111.66			
Less credit b/f	<u>177.58</u>			
Total	<u>2934.08</u>			

Note 2013/14 now paid therefore total sum in dispute = 2592.99