

**Leasehold Valuation Tribunal for Wales**

**Residential Property Tribunal**

**Case Reference** : **LVT/0052/10/13**

IN THE MATTER OF AN APPLICATION

Pursuant to s27A of the Landlord and Tenant Act 1985

And s20C of the Landlord and Tenant Act 1985

**Tribunal:** JDM Jones Chairman  
David K Jones FRICS

**Property:** 52 Penmaen Bod Eilias, Old Colwyn, Colwyn Bay, LL29 8BL

**Applicant:** Hannah M Roberts

**Respondent:** Clifftops (Colwyn Bay) Management Company Ltd

## The Application

1. An Application under s27A of the Landlord and Tenant Act 1985 was made on the 16<sup>th</sup> October 2013 by Hannah M Roberts (the Applicant) of 52 Penmaen Road, Bod Eilias, Old Colwyn, Colwyn Bay (the Property) for a determination under s27 of the Landlord and Tenant Act 1985 of the Service Charge for the years 2011, 2012 and 2013 in respect of the Property. The Application was addressed to Mainstay Residential Whittington Road Worcester which is said to represent Clifftops (Colwyn Bay) Management Company Limited (the Respondent). The Applicant also seeks an order under S20C of the Landlord and Tenant Act 1985 in relation to the costs of these proceedings.

## The Lease

2. The Applicant is the leaseholder of the Property under the terms of a lease dated 2010 and made between (1) Gladedale Manchester Ltd (2) the Applicant and (3) the Respondent (the Lease)

3. The Applicant covenants in the Lease (inter alia)

Clause 3.2 to pay the "Management Company" the "Tenants Proportion"

Clause 4.1 to pay the "Landlord" or the "Management Company" (as the case may require) the "Tenants Proportion" of the "Maintenance Expenses" at the time and in the manner provided)

Clause 4.2 to keep the "Management Company" and the "Landlord" indemnified in respect of charges for other services payable in respect of the demised premises which the "Landlord" and/or the "Management Company" shall from time to time during the term be called upon to pay such sums to be paid to the "Landlord" or the "Management Company" as appropriate on demand.

4. The Respondent covenants in the Lease to carry out the works of repair maintenance and renewal which are set out in detail in clause 6 and in order to do so to employ staff as necessary. The Respondent is further required to keep reserve funds in a separate account in trust for the Tenants of the "Building".
5. The Landlord covenants (inter alia) to insure the "Building" on the terms set out in detail in clause 7 of the Lease.
6. Clause 1 of the Lease sets out definitions of a number of terms used in the Lease in particular :
  - a. Clause 1.1.9 of the Lease provides that a "Fair Proportion" means a fair and reasonable proportion of the "Relevant Expense" based upon the use made of or benefit received by the Relevant Service and the total net internal area of the relevant apartments/houses benefiting from such service, such proportion to be determined by the management company or its managing agents and such determination shall be final and binding on the Tenant and not open to challenge save in the case of manifest error
  - b. Clause 1.1.23 of the Lease provides that the "Tenants Proportion" means the proportion of the costs charges and expenses payable to the Management Company in accordance with the provisions of schedule 5 of the Lease

7. Schedule 5 of the Lease deals with “the Maintenance Expenses”. In particular it provides in paragraph 1 that the “Tenants Proportion” means a Fair Proportion of the amount attributable to the matters mentioned clause 6 and of whatever of the matters referred to in part 2 of the schedule are expenses properly incurred by the Management Company which are relative to the matters mentioned in clause 6.

## **The Inspection**

8. The Property was inspected on the morning of the 13<sup>th</sup> March 2014 in the presence of Mr. Brian Roberts the father of the Applicant. The Property is a two floor duplex in a recently built development near the site of what was the 70 Degrees Hotel. It is located on a cliff top overlooking Colwyn Bay (owing to heavy mist this was not visible at the time of the inspection).
9. The development is gated and we were allowed access to the site by a representative of the Respondent. There are two similar blocks of property side by side having designated parking spaces and well-tended gardens.
10. There is no lift and the Property is approached via a common staircase. The common parts appeared to be clean and well-kept and maintained.
11. The accommodation at the Property comprises an entrance hall with storage facilities; good sized living room/sitting room; and kitchen area and bathroom. On the upper floor are two good sized bedrooms with good storage space. The Property has all mains services with meters located in the common parts. An emergency exit is provided from the upper floor on to the common stairwell. Parking spaces provided outside as is a bin area.

## **The Written Submissions**

12. The parties agreed to the Application being dealt with on the basis of written representations and the committee’s inspection.
13. We had before us:
  - i. The Application
  - ii. An undated copy of the Lease
  - iii. A bundle of documents provided by the Respondent which included:
    - a. Service Charge budget for the year to 31<sup>st</sup> December 2011
    - b. Service Charge budget for the year to 31<sup>st</sup> December 2012
    - c. Service Charge budget for the year to 31<sup>st</sup> December 2013
    - d. Service Charge budget for the year to the 31<sup>st</sup> December 2014
    - e. Service Charge financial statement 31<sup>st</sup> December 2011
    - f. Service Charge financial statement 31<sup>st</sup> December 2012
  - iv. Correspondence from Mr. Brian Roberts on behalf of the Applicant including:
    - a. Letter dated 6<sup>th</sup> December 2013 from Mr. Brian Roberts to the tribunal
    - b. Letter dated 2<sup>nd</sup> January 2014 from Mr. Brian Roberts to the tribunal

- c. Letter dated 21<sup>st</sup> January 2014 and enclosures from Mr. Brian Roberts to the tribunal
  - d. Preliminary information sheet believed to have been provided to the purchasers.
  - e. Letter from Cobbetts Solicitors 13<sup>th</sup> April 2010
  - f. Letter from Bone and Payne Solicitors dated 6<sup>th</sup> February 2014
  - g. Letter dated 7<sup>th</sup> February 2014 from Mr. Brian Roberts to the tribunal
- v. Statement of Andrew Croft area property manager Mainstay Residential Limited (undated) in response to Mr. Brian Roberts letter dated 2<sup>nd</sup> January 2014
14. In his letter of the 6<sup>th</sup> December 2013 Mr. Roberts confirmed that the Applicant objected to the service charges for all three years 2011, 2012 and 2013. He submitted that:
- 1. Before exchange of contracts in 2010 the developers Solicitors provided a service charge estimate of £675 per apartment irrespective of size
  - 2. Schedule 5 paragraph 1 of the Lease provides that the Tenants Proportion means a Fair proportion
  - 3. After completion the Agent charged by reference to the size of the apartment, Mr. Roberts said that this was accepted by the Property Manager as being wrong
15. Mr. Roberts made further submissions in his letter of the 2<sup>nd</sup> January 2014 in which he confirmed that the Applicant objected to the total amount of the Apartment Service Charge for the years 2011 to 2013 and the manner in which the Managing Agents have calculated them since 2011. He submitted that there was no indication given to suggest that the Apartment Service Charge varied dependent on the size of each apartment and that the change of methodology of the calculation was prejudicial to the Applicant. He submitted that the new method of calculation was not reasonable because this was not the method used prior to the Applicant's purchase.
16. Mr. Roberts' letter of the 24<sup>th</sup> January 2014 is a response to Mr. Andrew Croft's comments in his undated statement. He deals with the history of the applicant's concern about the service charges and the meetings and correspondence which have taken place.
17. In support of his submissions, Mr. Roberts produced a copy of a letter dated 6<sup>th</sup> February 2014 from Solicitors who acted for the Applicant in the purchase of the Property, a copy of the letter dated 13<sup>th</sup> April 2010 from Solicitors acting for the developer and a Preliminary Information Sheet from which it is understood was given to prospective buyers of the apartments in this development. This provided a preliminary estimate of the likely Apartment Service Charge.

## **The Decision**

18. The Tribunal is required to consider:
- 1. Whether the service charge is due at Common Law.
  - 2. Are the service charges reasonable whether under section 19 of the Landlord and Tenant Act 1985 or at Common Law?

3. Is there a statutory bar to recovery?
4. That the relevant costs were reasonably incurred

19. 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
5. The manner in which it is payable

20. Having inspected the Property the Tribunal is satisfied that the Respondent has reasonably complied with its covenants in the Lease. The Building and the grounds appear to be in good order (subject to some recent storm damage which was being repaired at the time of our inspection) and is well maintained. The common parts appear clean and well decorated and the grounds are well tended.
21. We are required to consider whether the costs incurred by the Landlord were reasonably incurred; has the work carried out or the services provided been of a reasonable standard. What is reasonable depends on the circumstances. There is no complaint by the Applicant about the standard of work; the complaint is about the change of methodology in calculating the charge which took place after the Applicant's purchase of the Property.
22. We have seen the accounts for the years to 31<sup>st</sup> December 2011, 31<sup>st</sup> December 2012 and 31<sup>st</sup> December 2013 and the costs incurred for each item of expenditure appear reasonable and relate to items which are within the covenants of the Lease. The accounts for each year also follow a similar pattern and are consistent. As no issues have been raised by the parties concerning individual items we do not propose to go in to more detail.
23. We are satisfied that the work has been done to a reasonable standard. The Covenants in the Lease have been complied with. Further we are satisfied that the charges have been reasonably incurred.
24. The Applicant says that she was provided with a Preliminary Information Sheet about the Property and that document indicated at point 17 page 2;
- “a service charge estimate prepared by Stevens Scanlon is attached, which comprises the Estate Service Charge (payable by all Tenants in the Development and the Apartment Charge for block D. The initial estimate for the charges for block D is £850.
25. The Applicant says that her Solicitors were told that the Apartment Charge would be £675.
26. The Applicant also contends that on her interpretation of paragraph 1 of schedule 5 of the Lease, the Tenants Proportion means a Fair Proportion and that this meant that the payment was per apartment – presumably because it appears that this is the way it had previously been calculated.

27. She says that following completion when new management agents were appointed they calculated the service charge by reference to the size of each apartment and this was not correct.
28. Paragraph 1.1.9 of the Lease provides that Fair Proportion means a Fair and reasonable Proportion of the relevant expense of the use made of or benefit received by the relevant service and the total net internal area of the relevant apartments benefitting from such service such proportion to be determined by the Management Company or its Managing Agents and such determination shall be final and binding on the Tenant and not be open to challenge save in the manifest error. We did measure the floor area of the apartment. This corresponded with the information in the papers before us.
29. We have seen the audited accounts for the relevant years and can see no manifest error in the calculation used to arrive at the relevant Service Charges for any of the years in question. Indeed if the methodology proposed by the Applicant were used it is likely that the charge attributable to the Property would be higher than that provided for in the accounts.
30. We are satisfied on the evidence that the service charge is reasonable and we have decided that:
1. the Service Charge is payable by the Applicant
  2. The Service Charge is payable to the Respondent
  3. The amount which is payable for the year ended 31<sup>st</sup> December 2011
    - a. Apartment Service Charge £1,238.90
    - b. Estate Service Charge £215.28

**= £1,454.18**
  4. The amount which is payable for the year ending 31<sup>st</sup> December 2012
    - a. Apartment Service Charge £1,035.21
    - b. Estate Service Charge £218.69

**= £1,253.90**
  5. The amount payable for the year 31<sup>st</sup> December 2013
    - a. Apartment Service Charge £1,087.93
    - b. Estate Service Charge £211.58

**= £1,299.51**

Allowance is to be given for any payments already made by the Applicant to the Respondent.

6. The date when the sums are payable is within 28 days of this decision
  7. The manner in which this payment is to be made is by cheque from the Applicant to the Respondent.
31. The Application refers to the 2014 Service Charge. We have seen a copy of the estimate of such charge but have not received any representations. The estimate follows the pattern of previous years and for the reasons set out above it would appear that the estimate is reasonable.
32. The Applicant has made an Application under s20C for the Tribunal to make an order that the costs incurred in connection with the Tribunal proceedings are not to be treated as relevant costs in determining the amount of any service charge payable. Neither party has made written submissions on this application and we make no order. Should the

Applicant wish to make representations in regard to s20C he should do so within 28 days of receiving these reasons. The Respondent shall thereafter have 14 days to reply.

Dated this 7<sup>th</sup> day of May 2014:

A handwritten signature in black ink, appearing to be 'D.M.R.', written in a cursive style.

Chairman: