

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0034/11/20

In the Matter of The Woodlands Chalet Owners Association,

And In the matter of Applications under the Section 29(1)(b)(ii) and section 20C of the Landlord and Tenant Act 1985 (the Act)

APPLICANT: The Woodlands Chalet Owners Association

RESPONDENT: Multispan (Cardiff) Limited

TRIBUNAL **AVS Scott Chair LLB**
 Mr. David Evans FRICS
 Ms C Calvin Thomas

ORDER

1. The Applicant is an association of qualifying tenants (whether with or without other tenants) which is recognised for purposes of the provisions of the Act relating to service charges.
2. The costs incurred by the landlord in connection with the applications are not to be regarded as costs to be taken into account in determining service charges payable by the following members of the Applicant:

Diane Davies, Prue Morris, Gareth and Jenny Lane, Chris Lugg, Mair and Peter Collier, Anne and Gareth Morris, Colin and Joanne Marsh, Ros and Graham Thomson, Kate and Elliot Coles, Carole and Barbara Miles.

REASONS

BACKGROUND

1. This matter concerns applications by the Woodlands Chalet Owners Association (the Applicant) for (1) an Order for recognition under S 29 of the Act and (2) an Order under S 20C of the Act that the costs incurred by the landlord in connection with the application are not to be regarded as costs to be taken into account in determining the service charge payable by the tenant or any other person.

2. The Applications were made by Cheryl Quick, the Secretary of the Applicant on 23 September 2020. The Application under S 29 of the Act was in respect of a refusal of recognition. An accompanying letter stated the application had been made due to an inadequate response by the Respondent to requests for clarification of how the 2019/20 service charge had been arrived at. An informal request had been met by a threat to charge legal costs to the group. A Residents' Association was then formed with a membership of 57% of eligible owners, a constitution was adopted and officers were elected, followed by a request for recognition. Three written requests for recognition were made (copies of which have not been seen by the Tribunal), to the last of which the Respondent responded that the Association was merely a collection of owners with the same interests but with no legal status. The list of issues regarding the service charges was resubmitted, following which the Association received an email from a solicitor acting for the Respondent stating that he had been instructed to advise the Respondent on issues arising from the correspondence and also on issues arising from the request for recognition. A list of chalet owners was attached to the Application with names and details of all those who had responded to the Association, together with the written constitution of the Association, signed and dated 12 June 2020. Of the list of 54 chalets, 32 were described as members. The Association did not have contact details for all members. The Application form thus gave details of all persons on whose behalf the Application was made but did not specify who were freeholders and who were qualifying tenants.
3. The Application on form LVT4 for an Order under S 20C of the Act was said to be sought on behalf of other persons. The statement of truth was signed by the Treasurer, Richard Mynott.
4. By a direction dated 6 November 2020, the Respondent was directed to file a statement verified by a Statement of Truth by 20 November 2020 to indicate whether the Respondent recognised the Applicant as a "Recognised Tenants' Association" for the purposes of the service charge provisions of the Act in accordance with S. 29 and if so to provide a copy of the Notice required by S. 29 (1) (a), and if not, providing full reasons, and to set out its position with regard to the Application made under S. 20C of the Act. The Applicant was to provide its statement in response by 4 December 2020.
5. The Respondent's solicitor filed a response with a Statement of Truth on 18 November 2020. The Applicant's response was filed on 3 December 2020. Neither party requested a hearing and the Tribunal considered the matter could be determined on the papers.
6. The Applicant's submission attached a copy of minutes of a meeting of the Applicant on 18 September 2020. A vote had been called on making applications to the Tribunal under S29 and S20C of the Act and all members attending agreed to proceed.

APPLICATION FOR CERTIFICATE OF RECOGNITION UNDER S29 OF THE ACT.

7. S29 (1) of the Act provides as follows:

A recognised tenants' association is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of this Act relating to service charges either—

(a) by notice in writing given by the landlord to the secretary of the association or

(b) by a certificate—

(i) in relation to dwellings in England, of the First-tier Tribunal; and

(ii) in relation to dwellings in Wales, of a member of the local rent assessment committee panel.

APPLICATION FOR AN ORDER UNDER S20C OF THE ACT

8. S. 20C provides:

“(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.

(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.”

REASONS FOR DECISION

9. Both parties referred to a decision of the Upper Tribunal in *Rosslyn Mansions Tenants' Association v Winstonworth Limited* (2015) UKUT 0011, an appeal from a decision of the First-tier Tribunal Property Chamber refusing a certificate under S.29 of the Act. HH Judge Huskinson referred to a guide published by the Department of Communities and Local Government (DCLG) as follows:

“As a general guide, an association should represent at least 60% of the flats in the block in respect of which variable service charges are payable.”

10. The Upper Tribunal Judge also referred to Guidance issued by HM Courts & Tribunals Service in document T545 which stated:

“There is no statutory specification of the matters to which the tribunal is to give regards in giving or cancelling a certificate of recognition and each application will be considered on its merits. In practice, the tribunal will want to be satisfied that the constitution and rules of association are fair

and democratic and that it is independent of the landlord...the tribunal will be concerned to see that the actual paid-up membership of the association represents a substantial proportion (as a general rule not less than 60%) of the potential membership.”

11. HH Judge Huskinson held that the first-tier tribunal has a wide discretion under s29 and that there was no requirement for a minimum percentage of the total qualifying tenants to support the proposed RTA. The application had to be looked at in the light of all the relevant circumstances. The proportion of total variable service charge paid by the flats supporting the application was a relevant factor, as was the history of complaints by the tenants regarding the service charges and their relationship with the landlord.
12. The Tribunal noted that the present version of the Guidance issued by the First-tier Tribunal Property Chamber in 2018 provides that a certificate may not be given if the tenants association represents fewer than 50% of the qualifying tenants.
13. The Applicant stated that of 19 Qualifying Tenants, 10 were members of the Association. Whilst the Regulations upon which the guidance was based were not in force in Wales, the decision in the Rosslyn Mansions case noted the Tribunal had a very wide discretion in relation to S 29 of the Act. As the Application represented over 50% of qualified tenants and 59% of those paying the service charge, the Tribunal was satisfied that the Applicant represented a substantial portion of those paying the service charge and, taking all the circumstances into account, a certificate of recognition ought to be granted. This is attached.

COSTS

14. Both parties also referred to a decision of the Upper Tribunal in *Plantation Wharf Management Limited v Blain Alden Fairman & Other* (2019) UKUT 236.
15. In that case, HH Judge Stuart Bridge held (paragraph 54) that:

“The section 20C application is and can be binding only on those persons who are either applicants or have been specified in the application.”
16. He also held that:

“For a person to be validly “specified” under section 20C (1) that person must have given their consent or authority to the Applicant in whose application the person is specified (that is named or otherwise identified).”
17. His reasoning was that the jurisdiction of the first-tier tribunal is entirely statutory and based on the application itself. In the absence of an application, there was no jurisdiction. Any section 20C order had to state clearly the persons in whose favour it is made.

18. In the Applicant's form LV4, the Applicant is stated to be the Woodlands Chalet Owners Association with the address being given as that of Cheryl Quick, Secretary. The statement of truth is signed by the Treasurer. It was said to be made on behalf of others but did not identify who those others might be. The form LVT9 (the application for a certificate of recognition) attached a list of chalet owners but this list did not identify which were "Qualifying Tenants". The Applicant's submissions attached an extract from the meeting of the Applicant held on 18 September 2020 when all members who attended voted in favour of proceeding with the action (ie to request a Certificate of Recognition and also seek a certificate under S20C in respect of the Landlord's costs incurred in respect of the proceedings before the Tribunal). The Respondent's submissions attached a list of all the chalet owners and specified which were leasehold and which freehold and also which were members of the Association. The Respondent agreed that 10 out of 19 owners had the right to ask the Tribunal to recognise the Applicant as an RTA. This constituted just over 52% of qualifying owners and therefore a certificate of recognition could be given.
19. The Tribunal was also satisfied in all the circumstances that an order should be made under S20C and made an order under S20C in favour of the leaseholders who were members of the Applicant. The Respondent submitted that the decision in Plantation Wharf meant that in the absence of any proof that an application made under S20C was made with the authority or consent of all leaseholders, then the Tribunal had no jurisdiction. At best, the S20C application was made by officers of the association on behalf of those who had indicated they had joined. The Respondent said there was no indication in the Application that those persons had agreed or consented to the application. The Tribunal did not agree with this interpretation, for the reasons set out above.
20. The Applicant in response noted that in the Plantation Wharf case the Appellant had accepted that an application could be made on behalf of a third party provided that person or persons was specified in the application and had consented or otherwise authorised the applicant to make the application on their behalf. The Applicant referred to paragraph 50 of the judgment, in which it was said that for a person to be validly "specified" under S20C, that person must have given their consent or authority to the applicant in whose application the person is specified. The Applicant went on to submit that it was properly formed and constituted and had the authority of its members to act on their behalf. A list of the members and their addresses had been submitted with the form LVT4 and its members, both freehold and qualifying tenants had been correctly specified. All the membership had voted for the secretary and treasurer to act on their behalf to make the applications under S 29 and 20C.
21. The Tribunal accepted the application form specified all members of the Association, though it did not identify "qualifying tenants". For those tenants, the Tribunal had to refer to information provided by the Respondent. However, as the Application specified the names of all persons of the Application and the resolution of the Applicant passed on 18 September 2020 authorised the Secretary and Treasurer of the Applicant to make the application, the Tribunal accepted the requirements of S 20C were satisfied. The wording of the section (see paragraph 8 above) gave the Tribunal a very wide discretion

as to the terms of the order to be made. Having been satisfied the qualifying tenants were identified and had given authority for the application under s20C to be made, the Tribunal went on to consider whether an order should, in the circumstances of this case, be made.

22. In its application for recognition under S29 of the Act, the Applicant said that a number of attempts had been made to engage the Respondent as to how the service charge for 2019/20 had been calculated. These enquiries were said to have been met with an inadequate response or no response at all (without giving details). An approach was then made as "an informal group of residents". A letter, not disclosed to the Tribunal as it was marked without prejudice, from the Respondent, threatened to charge legal costs to anyone involved with the group. It was then decided to form a Recognised Tenants Association.
23. This having been done, recognition was sought under S29 of the Act from the Respondent who merely acknowledged the Association's existence. No response was made to a further request for formal recognition. A third request for recognition was made and this time the Respondent replied that they felt the association had no legal status and was merely a collection of owners with the same interests. The Applicant then resubmitted a list of issues raised by tenants and a response was received by a solicitor instructed by the Respondent to advise on the issues raised and on the formal recognition request. The Applicant asked the Respondent to provide details of all the owners of the chalets so that the Applicant could advise those they had been unable to contact of the existence of the Association. It was said the Respondent refused to assist so the list of chalet owners who might be affected was incomplete.
24. Apart from the email from the solicitor appointed to respond to the Applicant's concerns dated 4 September 2020, the only response to the matters raised by the Applicant seen by the Tribunal was the submissions made as a result of a direction made on 6 November 2020. These submissions dealt with the Respondent's opposition for an order for recognition of the Applicant as an RTA and to the order under S20C of the Act, the objection being on the grounds that pursuant to guidance from the DCLG, an association should represent at least 60% of the flats in the block in respect of which a variable service charge was payable. In this case, only 19 of 54 chalets were freehold, around 35% of those paying the service charge and of the 19 leaseholders, only 10 had indicated they wanted the association to be recognised, only 19% of those paying the service charge. The point of an application to recognise a tenant's association is that it had been formed to represent the majority of "qualifying tenants" who pay a variable service charge.
25. In respect of the S20C application, the Respondent submitted that the Applicant's application was misconceived and could not succeed, so that the Respondent had been put to unnecessary and wasted expense in making the application, the application was not made with the authority and consent of all the leaseholders and the Act did not apply to freeholders.

26. It was also submitted it was not just or equitable to prevent the Respondent from defending a misconceived and flawed application.
27. In response the Applicant pointed out the regulations applicable in England (the Tenant's Association (Provisions Relating to Recognition and Provision of Information) (England) Regulations (2018) required that greater than 50% of the qualifying tenants request recognition, not that those qualifying tenants requesting recognition form greater than 50% of the total site population. Those Regulations are not applicable in Wales, as recognised by the Applicant, who submitted that it represented 53% of qualifying tenants and 59% of site owners as a whole. The figure could be higher if the Applicant were allowed to contact all owners of the chalets (something the Respondent had resisted).
28. The Applicant also pointed to numerous attempts to engage with the Respondent with respect to concerns regarding the service charge for 2019/20 and the application for recognition of the Applicant. The Respondent either dismissed or ignored such concerns, and indeed threatened the tenants that legal charges for any challenge to the service charge would be passed on. It was denied that the Respondent had been put to unnecessary and wasted legal costs in dealing with the Application as the Respondent had instructed solicitors prior to the Application being made.
29. The Tribunal was aware that any challenge to the service charge had to be made by means of arbitration. On the basis of the information before it, it did not appear that the Respondent had made any meaningful attempt to address concerns of the owners as to the level of the service charge. Indeed, the members of the Association had felt threatened by the Respondent who, instead of responding to concerns regarding the service charge, instead referred to legal costs thus incurred being charged by the tenants. The Tribunal did not consider this to be an adequate response. Engaging with the tenants might have avoided the cost of the applications to the Tribunal.
30. The Tribunal therefore made an order under S20c in favour of the qualifying tenants who were members of the Applicant.

Dated this 19th day of February 2021

**A Scott
Chair**

RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL
RENT ASSESSMENT COMMITTEE

CERTIFICATE OF RECOGNITION

An application from The Woodlands Chalet Owners Association for a Certificate of Recognition under the provisions of S 29 of the Landlord and Tenant Act 1985 as amended by Paragraph 10 of Schedule 2 to the Landlord and Tenant Act 1987 has been considered by

**AVS Scott Chair LLB
Mr David Evans FRICS
Mrs C Calvin Thomas**

who are persons appointed to act as a Rent Assessment Committee.

This is to certify that

The Woodlands Chalet Owners Association

Is a Recognised Tenants' Association for the purposes of the aforesaid Section.

This certificate shall be valid for a period of 5 years commencing on 19th February 2021 unless previously cancelled.

Dated this 19th day of February 2021

Signed

A Scott

Chairperson

(one of the persons appointed by the President of the Residential Property Tribunal as a member of the Rent Assessment Committee)