IN THE MATTER OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LVT/0033/09/19

IN THE MATTER OF 23 ARETHUSA QUAY, SWANSEA, SA1 3XH

MR PHILIP GREEN **Applicant**

-and-

CHIPPINGSTONE PROPERTY MANAGEMENT) LTD **Respondent**

Decision

In the matter of an Application under Section 27A, and Section 19 of the Landlord and Tenant Act 1985.

Tribunal Members: Trefor Lloyd, Legal Chair
Roger Baynham, Surveyor Member
Carole Calvin Thomas, Lay Member

Hearing Virtually on the CVP platform on the 11th October 2021

The Applicant Appeared in person.

The Respondent was represented by Counsel Mr Pollitt

1. The Tribunal convened on the 11th October 2021 on the CVP platform. No property inspection was undertaken.

Property Description

2. The subject premises comprise of a 26 flat development.

The Application

3. By way of an application dated 19th December 2019 the Applicant Mr Phillip Green applied to this Tribunal in relation to issues relating to the 2019/2020 Service Charges. Box 15 of the application form expands upon the items in dispute as being costs to replace all external doors in response to previous neglect, and the replacement of one vandalised door. Under Section D of the form the reason why determination is stated as "the need [for the replacement] is dubious the lowest bid is from a previously recommended installer who has done window replacements with no adverse comment".

4. Under the heading "Any Further Comments You Wish to Make" the Applicant states as follows "it is impossible to assess the alternate bids, the original requirements, bids and reason for rejecting the lowest bid in favour of the preferred bidder has not been revealed. Representations to improve the requirement were ignored, possibly resulting in rejection for aspects that should have been specified". To the application is attached the phone and e-mail details and the addresses of the other tenants.

5. This matter has progressed albeit slowly due to numerous reasons not least of all the Corona Virus Pandemic.

6. A virtual hearing was eventually convened on the 11th October 2021. Mr Green appeared in person and Counsel Mr Pollitt represented the Respondent. Prior to the hearing numerous directions were made, eventually culminating in a trial bundle being filed and served at the Tribunal and on the Applicant. The reason for the Respondent having carriage of the Bundle as opposed to the Applicant was the fact that the Applicant was acting in person.

7. The matter grew from the initial issue as to replacement doors to include other matters. These by agreement were included and a definitive Scott Schedule was produced with comments by both the Applicant and Respondent can be found at tab C pages 1 -10. That document also is in essence the Applicant's Witness Statement.

8. On behalf of the Applicant we heard from Mr Green alone.

9. On behalf of the Respondent we heard from:- Eironwy Davies, Ian Phillips, Angela Leach, Paul Newell, Deena Howels.

The Hearing

10. At the outset of the virtual hearing Mr Green raised an issue about the bundles and differences between them. The bundles had been a live issue for some time with difficulties emanating from, inter alia, Mr Green's refusal to accept e-mail correspondence from the Respondent's solicitors (See further below). The Tribunal Chairman made the point that all had electronic bundles and everybody had what was necessary. Whilst the Tribunal could not explain any additional pages there was no prejudice and as such the matter proceeded upon that basis.

11. As is natural in cases of this nature we concentrated upon the Scott Schedule and the six items contained therein.

12. We firstly heard from Mr Green giving evidence in chief as follows:-

Item No 1

a). The Section 20 process was in relation to replacing doors leading to the 26 apartments. Those doors had been in place since 1983 and were built of good sturdy timber. There had been some break-ins and stealing of bicycles.

b). There had been a failing in terms of maintenance due to the absence of painting for some years whilst the freehold was being acquired. Some of the utility rooms are now being used to house the letter boxes. Although only one or two doors were really rotten and damaged, they were all replaced.

c). Mr Green accepted that the Section 20 Part 1 process was sent out properly. However, his reply commenting on the fire risks and the locks was still outstanding and awaiting acknowledgement. Having asked Mrs Leach for the Part 2 notice she had given him a paper copy and he was then sent a further copy and expected the consultation to continue, despite this he was asked as Treasurer for the Company for a cheque for half of the price of the doors by Dr Rafiq.

d). The Section 20 process had not been concluded properly or reconciliation of Part 3 having been issued at the end of the process. Whilst Mr Green had been shown a screen shot e-mail by Miss Davies that e-mail was his name in an abbreviated manner and may not have been delivered to him. He had no recollection of receiving it.

e). However, Mr Green accepted in his own evidence that the process was a foregone conclusion and it was not possible to test all matters at this stage.

f). The locks were an oversight and there was extra cost of having to put new cylinder locks in.

f). The planning issues were simply mentioned at the AGM and the AGM was for shareholders and not the same as tenants in every case. Ms Davies had in 2015 obtained replacement UPVC windows elsewhere.

Issue number 2 – damage to the utility doors.

a). There should have been a cost benefit analysis of repair and painting as opposed to replacement of the utility doors.

Issue 3 – Ongoing maintenance.

a). The tenants who are leasehold also have a share of the freehold. The Applicant came home from working overseas in 2014 and decided he should get involved as he had not done anything for the last 30 years in respect of the freehold management. Mr Bailey who had been acting for some time had retired and the deputy retired in the 2014 AGM. Following that there was no real expertise on the board other than Mrs Leach who was a touch typist.

b). Mr Green took over after the acquisition of the freehold at £190,000 which was paid from the sinking fund, thus depleting the sinking fund. Based upon this it was decided to build up a further £100,000 sinking fund and a £100 per tenant for a roof fund. Mr Donald Evans had been raising an issue with the roof for some considerable time.

c). Given the amount of money that had been amassed he felt that a service charge of £600 appeared to be adequate as Mr Lake had worked on a five-year budget and the carpets had an eleven-year life, therefore half price in each five-year cycle was sufficient.

Carpets

a). In 2015 at the General Meeting Mr Bailey raised the point about replacing the carpets. Initially carpet tiles were considered and as such that triggered a Section 20 process as carpet tiles were far more expensive than normal carpet.

b). After a meeting it was decided that carpet tiles would not be pursued and normal carpet was to be put down. Therefore, there was no need for the Section 20 process but in Mr Green's view it should have been withdrawn.

Scott Schedule Additional Item Costs

a). The Applicant said that his earlier submissions in relation to the locks had been covered.

b). In terms of other issues, he maintained that the doors could now swing through in or out whereas previously there was a frame to stop them. All that stopped the new doors was a block and if removed would allow the doors to swing in and out. The glass in the doors was also opaque as opposed to clear which in his view caused a danger as you could not see if there was anybody waiting outside to gain entry into the property. He had personally had a bicycle stolen and had come across one person trying to get into one of the blocks.

13. Mr Green was then cross-examined by Mr Pollitt and stated that he had been a director responsible for the company but he resigned his position in August 2018, not the end of December 2018. He helped out with the books until 2019.

14. When asked what he meant by "neglected and if painted would the doors be fit for purpose". He answered that the doors would be in a better state if painted but he was not a qualified painter. He confirmed his oral evidence that the doors were damaged, they were 30 years old and that they had suffered attacks. In relation to Block 2 Mr Green again made the point that there had been no cost benefit analysis but stated that he was happy to foot the bill.

15. Mr Green was then taken to page 332 and the PCL report and specifically asked if he doubted the conclusion at paragraph 2.8. of the report. That paragraph stated that the installation had been carried out to a good standard and there were no workmanship issues or defects to report. Mr Green answered that by saying that the issue with the lock mechanism and only the small block stopping the doors opening outwards was not something that PCL had been consulted about specifically, there was no analysis in that regard.

16. He was then asked questions about Item 2 as detailed in the Scott Schedule and confirmed that the utility doors were neglected, but made the point that those doors could be replaced with wooden doors as they were internal and would not as was suggested by Mr Pollitt, be a question of aesthetics.

17. In response to being put to Mr Green that it was better to negotiate to buy in bulk, he answered that 18 or so doors had different styles of hanging. He again made the point that the utility doors would not stand out as they were in a different position.

18. Item 3 – When asked about not objecting to the £900 proposal for the initial ongoing management payments he said that he could not personally do so when he was on the board. Thereafter, an extract from page B54 was read out and it was put to Mr Green that he did not vote against the majority decision of setting the figure at £800. His answer to that was "if there was no point in voting – I don't vote".

19. When put to him by Mr Pollitt that he did not feel strongly enough to even cast a vote he said he did feel that £800 was excessive and that £600 was a reasonable compromise.

20. In terms of the Section 20 process, he accepted receipt of the document at page BO62 which is a Section 20 notice. He made the point that it had possibly been sent to his spam address as it had been addressed to Phil Green. Mr Green was unwilling to accept that there had been sufficient attempts to send it to him. He said he did not get another copy until after the deadline and replied when he first saw it, asking if he had missed something. In relation to the photo at page FO77 the snapshot, Mr Green said he only knew of the notice on the 3rd July and maintained there was no reason why the further resend had not been undertaken. In terms of the carpets when asked Mr Green again maintained that the Section 20 process should have been cancelled when the decision was made to buy carpets as regards to carpets tiles.

21. We then heard from Miss Davies who told us in evidence in chief that she had made various complaints about the No. 8 Block and all the doors were replaced. She referred to the issue of planning and the difficulty in contacting the Planning Department in relation to the planning application for a number of properties as opposed to a single house. Eventually she was told that aluminium windows, grey in colour were required. They had initially thought UPVC quotation from Nolan would be appropriate. When she asked again for a quotation for the aluminium windows Nolan was £10,000 less than the others which was of concern. Miss Davies had a £60,000 ballpark figure for the budget and subsequently sent the checklists as Nolan was £10,000 less which raised a number of queries.

22. The Part 2 process was sent out and they then decided on the best deal based upon the four quotes, replies and comments received.

23. We then heard from Mr Phillips the previous partner now husband of Miss Davies. He took over from Mr Lake after the 2015 AGM and was given a spread sheet and assisted until the 2017 AGM. Mr Phillips confirmed Mr Green helped in March 2017.

24. Mr Phillips opened two bank accounts so that they could get some interest. Upon being cross-examined by Mr Green he confirmed he did not update the budget with the real figures, i.e. it was a historical five-year budget.

25. Mrs Leach, in evidence in chief confirmed she had printed off a screenshot but was not sure if she had given Mr Green the entire set, but it had again been sent in July. She maintained that the 9th July e-mail which was sent to Mr Green and others would have in her words "put him ahead of the game" because he would have received it before the tenants. To this Mr Green maintained that he did not remember receiving the document.

26. Mr Newell confirmed his Witness Statement and that the roof may have another ten-to-fifteen-year life but nothing was set in stone. He accounted how Mr Green was told to return the company records and mentioned the police were called. Mr Green cross-examined Mr Newell on the basis that he disputed his address had ever been given as a business address.

27. We then heard from Deena Howels. She had been a past director of the company for 10 years. She was not sure if she resigned in 2014 or 2015 and denied recommending Nolan as a window installer and confirmed she had an issue with Mr Green wanting to take notes instead of Mr Evans at the meetings.

28. We then heard closing submissions from Mr Pollitt, he submitted that:-

    (a) There was confusion about the complaints. The original application was in relation to the replacement doors rather than maintaining them. Since then, the issues have expanded with a suggestion of neglect in terms of the doors. The doors are in excess of 30 years old, and it was reasonable to replace with more modern doors. In cross-examination Miss Davies confirmed that they had to replace with aluminium grey doors and that was not unreasonable. In this case there was a range of reasonable responses. They did not have to follow exactly one method of working. It is more simple to replace all the doors at the same time to save money.

    (b) In terms of item 2 - the internal doors the same comments were made and that it was reasonable to secure and change them.

    (c) Item 3 – Mr Green had in cross-examination accepted it was reasonable to have a maintenance fund and this was voted for in accordance with the terms of the lease. In any event it would be better to build up a fund than to have a greater sum due in the future when the roof was in need of repair or replacement.

    (d) In terms of the carpet issue, that has fallen away there is no need to formally withdraw a Section 20 process. The carpet is now in place.

    (e) In terms of the Section 20 procedure itself, the Respondents had tried to e-mail Mr Green. It was sent to his address. The fact that unfortunately Mr Green had not received it was not the fault of the Respondent. In any event Mr Green had a copy later on. The Respondent looked at all

the quotes and decided on one that was most suitable. In cross-examination Mr Green did not attack the process at any stage and it remained unchallenged. Their activities at all times were logical, it is unfortunate it has become such a protracted matter.

(f) Additional Locks - In reality the Respondents did not expect the door locks to be an issue.

(g) If we did not accept the section 20 process had been done properly the Respondents relied upon the Section 20 ZA dispensation. If there was a technical breach it can be weighed in the circumstances. The reality is that all concerned were well aware new doors were needed and at all times the Respondents sensibly complied.

28. Mr Pollitt then addressed the Tribunal on costs and vexatious behaviour. He maintained that the case was fraught with difficulty due to Mr Green not being prepared to allow solicitors to e-mail him, but was prepared to allow the Tribunal to do so. That was unreasonable behaviour. The Respondent instead of identifying missing pages sent 200 pages 90% of which were duplication.

29. Mr Pollitt then turned to the Section 20C application and said that if the Tribunal was not with him as regards costs against the Applicant, the costs should be reasonably included by the leaseholders as the matter had resulted in conclusion of all outstanding points.

30. We then lastly heard from Mr Green. In closing submissions, in terms of the replacement doors he submitted that nobody disputed the condition. However, the decision was made knowing neglect and absence of painting the doors, there should have been some sort of analysis. He did agree however they were possibly due for renewal as they were 30 years old. In addition, the Part 3 process was never issued.

31. Various bits had never been given to him or brought to his attention. There was no analysis undertaken or the ability for a tenants' inspection. He expected the Part 2 notification to be issued and resent immediately. Mrs Leach's e-mail was associated with an i-phone attachment and an encoded message therefore it may have been the reason he did not see it. It could have gone into Yahoo spam mail and he never received the resent e-mail. He had searched his hard drive and there had been Part 3 attempt to explain how they had arrived at the conclusion made before the Part 2 was complete.

32. In terms of the carpet issue, his application made this happen. It also galvanised the company into doing a great deal of work since then. He stated Mr Lake was a professional accountant and Mr Bailey a businessman. The others were amateurs, this was demonstrated by the difference in the list of tenants at Companies House and the list of tenants that actually exist. They are incapable of updating Companies House records.

33. He explained that he embargoed any further e-mails from the company and its Solicitors after the issue of the suggestion that part of the Section 20 process had

been e-mailed but he had no trace of it. He suggested to the Respondents' Solicitors that they supply information in another electronic format such as a memory stick. They refused to do so raising issues of security which in Mr Green's submissions were incorrect as the risk was all his not theirs.

34. The delay was down to the Respondent's Solicitors. Documents when printed out were entirely in black and white whereas in electronic format they were in red. He had made points about the differences in the bundle but nothing was done about it.

35. Finally in terms of costs it was initially indicated that £700 not the current £19,473 would be the charge. If it was ruled that the company as opposed to the leaseholders has to pay the costs the company could not as it has no money.

The Law

36. Section 19 of the Landlord & Tenant Act 1985 ("the 1985 Act") places limitations on the recoverability of service charges on the basis of reasonableness.

37. Section 27A of the 1985 Act provides the Tribunal with power to determine the amount of service charge payable in respect of costs incurred relating to repairs and maintenance.

38. Section 20 of the 1985 Act provides a requirement of a consultation in respect of qualifying works if a leaseholder is expected to pay more than £250.

The Detail

39. The Consultation procedure to be followed is set out in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 SI 2004/684 ("The Consultation Regulations").

40. By virtue of Regulation 6 of The Consultation Regulations, in the absence of a valid consultation, the amount that the freeholder can lawfully recover from the leaseholder for work is capped at £250.

41. Section 20ZA of the 1985 Act provides the Tribunal with power to dispense with all or any of the consultation requirements in Section 20 and The Consultation Regulations if it considers it reasonable to do so.

42. The Supreme Court in ***Daejan Investments Limited -v- Benson [2013] UKSC 14*** provides guidance as to how the discretion under Section 20ZA should be exercised, confirming that:

(i) The purpose of Sections 19 to 20ZA was to ensure a leaseholder was not required either to pay for unnecessary or defective services, or to pay more than was necessary for services to an acceptable standard.
(ii) In the circumstances when considering a Section 20ZA(1) Application the Tribunal has to focus upon the extent of prejudice as a result of any failure

to comply with the consultation requirements. Further, it was hard to see why dispensation should not be granted where the failure to comply had not affected the extent, quality and cost of works.

(iii) Compliance with the requirements was not in itself an end and dispensation should not be refused simply by reason of a serious breach. The prejudice flowing from the breach was the main and usually only question for the Tribunal.

(iv) Where the Tribunal was considering prejudice, the legal burden would be on the Applicant (ie the party seeking dispensation from the consultation requirements), but the factual burden in terms of identifying a relevant prejudice would fall upon the Respondents (to the Application of Dispensation). Once the Respondent (to the Application for Dispensation) have shown a credible case for prejudice, it is for the Applicant to rebut the same.

43. In relation to the Application under Section 20C. Section 20C of the 1985 act provides:

(1) "*20C(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 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.*

(2) *The Application shall be made:*

(a) in the case of Court proceedings, to the Court before which the proceedings are taking place or. if the Application is made after proceedings are concluded, to a County Court;

(aa) in the case of proceedings before a Residential Property Tribunal to a Leasehold Valuation Tribunal.

(b) in the case of proceedings before a Leasehold Valuation Tribunal, to the Tribunal before which the proceedings are taking place or, in the Application is made after proceedings are concluded, to any Leasehold Valuation Tribunal.

(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".

44. In accordance with Section 20C of the 1985 Act, the Tribunal may make such Order as it considers just and equitable in all the circumstances and a number of cases provide guidance in this regard.

Decision

45. Having considered the matter carefully in terms of both the written evidence and the oral evidence and closing submissions we as a Tribunal unanimously find as follows:-

a) At all material times the company conducted the Section 20 process adequately. Mr Green conceded that the fact that he did not receive the

notice did not invalidate the process and that concession is to his credit. It is clear the parties simply do not seem to be able to get on with one another. For whatever reason there is a lack of co-operation which is unfortunate, something however this Tribunal cannot address.

b) Even if we are incorrect in our view as to the proper process having been undertaken by the Respondent Company, given the need to replace the doors and given the facts in relation to the other matters, we would not have had any hesitation in granting dispensation under Section 20 ZA as it seems to us abundantly clear that new doors were required. It was sensible to replace the entirety of the doors to save money. Furthermore, the current doors according to the report from JAL have been installed correctly.

c) Whilst Mr Green may have concerns about their security there was no evidence before us, expert or otherwise, in that regard.

d) Accordingly, we find the replacement doors to be a reasonable expense under Section 19, the Section 20 process having been followed correctly. The same finding also applies to the internal doors.

e) The third item being the ongoing management charges should not have been a matter raised by Mr Green before us. That matter was resolved by way of a majority vote. It is clear from the record of the meeting with Mr Green, that, for whatever reason (and in cross-examination he said he did not see a point in voting if voting was pointless), he did not even cast a vote against the procedure.

f) Furthermore, we agree that there is some force in Mr Pollitt's submissions that it would be better to build up a fund gradually knowing full well the roof may well need to be repaired or replaced in the next ten to fifteen years, rather than have a nasty shock at the end of the period when all leaseholders have to find large sums of money. The approach here is completely logical as has been the company's approach in relation to all other matters.

g) We have already dealt with items 4 and 5 in the above paragraphs.

h) Item 6 – In terms of the additional expenditure on replacing the lock barrels, whilst this is unfortunate it is understandable that such an oversight can arise. We again find the approach taken by the Company completely reasonable and if the matter had been raised by Mr Green in relation to the absence of consultation, again, we would have no hesitation in granting dispensation under Section 20 ZA of the Act.

Costs

46. Turning to the issue of costs. This matter has taken an inordinate amount of time to be resolved even given the current state of play and previous states of play with the pandemic etc. It is clear the parties cannot get on with one another. Whilst we have some sympathy with the Respondent Company we are not inclined to go so far as to say that Mr Green's approach has been vexatious. He explained the reason why he would not accept e-mail correspondence from the company any longer, being the fact that he had never received (upon his case) the Section 20 Notice until, he was shown copies by Mrs Leach. We accept his point that the Solicitors acting for the company could simply have acquired a memory stick at minimal cost, downloaded the documents onto that memory stick and thereafter sent them onto Mr Green. To echo his words, he would then be taking all the risk in relation to any potential virus or malware issues. In the circumstances other

than Mr Green seeking to expand on the issues referred to in the initial application to include the annual maintenance charge when the same had been determined by way of a majority all other issues raised were reasonable and, in the circumstances, we do not make an adverse costs award against Mr Green.

47. In relation to the Section 20C application we see the force in Mr Pollitt's arguments. There were here, on any view, a number of live issues which would never have resolved themselves without the Tribunal's involvement. As in essence the company is made up of shareholders all of whom have a leasehold interest in the Arethusa Quay flats, save as for tenants who may be paying service charge in addition to rent (a matter outside the ambit of this Tribunal or its consideration). Accordingly, we form the view that for the majority of the time the same parties would be footing the bill irrespective of whether or not it is ruled that the company has to meet the costs as opposed to the leaseholders. We are also mindful of Mr Green's comments that the company has no money, and in the circumstances do not grant the Section 20 dispensation.

Dated this 23rd day of November

R Lloyd
Chairman