

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0003/05/23

In the Matter of: Premises at Flat 6, 39 Bellerphon Court, Copper Quarter, Swansea SA1 7FS

In the matter of Applications under Section 19, 27A and Section 20C of the Landlord and Tenant Act 1985

APPLICANT: Kathryn Lacey

RESPONDENTS: FirstPort Property Services No.7 Limited

REPRESENTATION: Mr Gary Donaldson of Counsel

TRIBUNAL: Tribunal Judge Kelly Byrne
Mr Hefin Lewis, Surveyor Member
Dr Angie Ash, Lay Member

VENUE: Virtual Hearing

DATE OF HEARING: 16th April 2024

DECISION

The Tribunal grants the Applicant's Application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the follow items:

1. The Tribunal finds that the Applicant is liable for items 1-3, 5-8,10-13 and 14-16 and the amounts charged are reasonable.
2. In relation to Item 4 the Tribunal finds that the Applicant is liable but the reasonable amount to be paid is 50% of what was charged and already paid with the difference from the sum already paid to be credited to the Applicant's service charge account.
3. In relation to Item 9 the Tribunal finds that the Applicant is liable but the reasonable amount to be paid is 50% of what was charged and already paid with the difference from the sum already paid to be credited to the Applicant's service charge account.
4. Items 14 and 17, the Tribunal find that whilst these costs were payable by the Applicant and reasonable at the time of the service charge demand, the Respondent has since indicated that not all of the costs were incurred. The Tribunal note that the Applicant is only liable for the costs actually incurred and the Respondent has conceded this point and confirms that the overpayment of the service charge (correctly apportioned) as set out on Page 189 of the bundle, will be returned to the Applicant, if they have not done so already.
5. In so far as the cost incurred by the Respondent in connection with these proceedings are recoverable by way of the service charge payable under the Lease, they shall not be

regarded as relevant costs to be taken into account in determining the amount of any such service charge.

Background

1. On 5th May 2023, Kathryn Lacey (“the Applicant”) submitted an application to the Tribunal for a determination under section 19, 27A and 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”), in respect of Flat 6, 39 Bellerophon Court, Copper Quarter, Swansea, SA1 7FS (“the property”) for the service years ending 2021, 2022, 2023 and 2024.
2. The Applicant occupies the property under a lease dated 30th June 2017, made between (1) BDW Trading Limited and (2) Kathryn Victoria Lacey (the Applicant). The freehold owner of the property is Adriatic Land 8 Limited (Incorporated in Guernsey).
3. The property is managed by Mainstay Residential Limited (“Mainstay”), this company has been acquired by FirstPort Property Services No.7 Limited and is now part of the FirstPort Group of companies. The registered office being, 11 Queensway, New Milton, Hampshire, BH25 5NR. The management company is responsible for the provision/arrangement of serving and the demand and collection of service charges.
4. It is important to note that as of 1st April 2024, FirstPort Property Services No.7 Limited are no longer the management company for the property.

The law

5. *s.19 of the Landlord and Tenant Act 1985 states*

Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

6. *Section 27A of the Landlord and Tenant Act 1985 states:*

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

(d)the date at or by which it is payable, and

(e)the manner in which it is payable.

(2)Subsection (1) applies whether or not any payment has been made.

(3)An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,

(b)the person to whom it would be payable,

(c)the amount which would be payable,

(d)the date at or by which it would be payable, and

(e)the manner in which it would be payable.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5)But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or

(b)on particular evidence,of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

7. Section 20C of the Landlord and Tenant Act 1985 states that;

“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,.....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.”

8. The application in the case of proceedings before a Leasehold Valuation Tribunal is to be made to the tribunal before which the proceedings are taking place and the tribunal may make such an order on the application as it considers just and equitable in the circumstances.

The Lease

Service Charge

9. The Service Charge is defined at clause 1.35 on page 9 of the Lease [p.70]

‘a fair and reasonable proportion attributable to the Premises (as reasonably and properly determined by the lessor or its managing agents having regard to the number and size of the Apartments or other residential units of the Apartments or other residential units in the Development from time to time and the services provided to each Apartment) of the total Service Costs and the lessor or its managing agents shall be entitled (acting reasonably) to vary the proportion attributable to the Premises and the other Apartments from time to time as may be deemed appropriate’

10. Clause 1.36 [p.70-71]

‘the proper and reasonable costs and expenses which are properly and reasonably incurred and lawfully recoverable described in the Sixth Schedule hereto and shall include not only those costs and expenses which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinafter described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made during the Term including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its managing agents may in its or their reasonable and proper discretion allocate to the Maintenance Year in question as being fair and reasonable in the circumstances’

11. Clause 5.1 and 5.2 at page 14 of the Lease [p.78]

Covenants by the Lessee

12. 5.1 *The Lessee hereby covenants with the Lessor and with and for the benefit of the Owners of the Apartments that the Lessee and the persons deriving title under him will at all times hereafter observe and perform the Lessee’s Covenants set out in Part I of the Fourth Schedule hereto*

5.2 *The Lessee hereby covenants with the Lessor that the Lessee will observe and perform the Lessee’s Covenants set out in Part II of the Fourth Schedule hereto*

13. Part II, Clause 2.1 – 2.4 of the Fourth Schedule at p.33 of the Lease [p.97]

To pay Service Charge

14. *2.1 To pay the lessor or its managing agents the Service Charge (including the provision for future expenditure) as certified in the Certificate issues as soon as conveniently possible after the expiry of each Maintenance Year.*

2.2 Upon the completion of this Lease to pay to the Lessor or its managed agents a proportion of the Interim maintenance Charge from the date of this Lease to the next Service Charge Payment Date.

2.3 Upon each of the Service Charge Payment dates to pay to the Lessor or its managing agents the Interim Management Charge in advance on account of the Lessee's liability for payment of the Service Charge

2.4 Upon the Certificate being issued as aforesaid to pay to the Lessor or its managing agents any shortfall between the interim Management Charge and the Service Charge so certified and the Lessee shall be credited with any excess payment that he may have made.

15. Under the Lease the Service Charge Payment dates are 25th March and 29th September in each year

Reserves

16. Paragraph 16 at P.45 of the Lease [p.109]

To accumulate reserve fund

'To accumulate such sum or sums from time to time as the lessor or its managing agents shall consider desirable for the purpose of accumulating a reserve fund as a reasonable provision against the prospective costs expenses outgoing and other matters mentioned or referred to in the Lessor's Covenants or any of them'

Inspection

17. On 15th April 2024 the Tribunal members inspected the site in the presence of the Applicant and Natalie Daniels who is the Regional Manager for the Respondent.
18. 39 Bellerphon Court is located within a 3 storey block which contains 6 flats. The block has an entrance to the front of the block which opens up to a small grassed area and a pavement. The rear entrance opens up to a court yard area, with designated car parking places. The bin stores are also located at the rear of the premise.
19. Internally, there is a small communal stair area. There are 2 flats situated on each floor.

The Hearing

20. The Tribunal convened remotely on the 16th April 2024. The Tribunal had before it a final hearing bundle of 580 pages and in addition, the Applicants bundle of 124 pages, which included witness statements, evidence and a detailed Scott Schedule setting out the issues that the Applicant wished to raise with the Tribunal and the Respondents replies. Throughout this decision any reference to a page from the hearing bundle will be included between [], where a page from the Applicants bundle is being referred to this will be fully referenced e.g. [p.1] of the Applicants bundle.

21. In accordance with the usual practice in cases of this nature the Tribunal primarily concentrated upon the Scott Schedule, but confirm that they have read all of the evidence and documentation filed and served on behalf of both parties.
22. The Applicant disputes the following 17 elements of the service charge, which are set out in the Scott Schedule [121-131] which will be taken in turn.
23. For each of the items set out below the Tribunal heard evidence from the Applicant and the witness for the Respondent Ms. Daniels. Questions were asked of both witnesses by Counsel for the Respondents, Mr. Donaldson and the Tribunal. The Applicant also asked questions of Ms. Daniels.
24. The Tribunal clarified with the Applicant the service year period as it is stated in the Scott Schedule as March 2023 to September 2024, she confirmed that this is a typo and the correct period is from March 2023 to March 2024. The Applicant also confirmed that the dates at items 2, 3, 4, 5 and 6 should be amended to reflect the service year from March to March and that any reference to September should be removed.

Item 1 - March 2023 – March 2024 – Reserve account

25. It is the Applicant's case that during this service year the contribution to reserves has increase from £3150 to £5000 and that she does not accept the justification provided by the Respondent that the increase is due to potential fire safety reform as this was relied on by the Respondent in the previous service year for an increase in the amount of reserve funding being demanded. The Applicant also points out that in their budget the Respondent has stated that no major works were planned.
26. The Applicant states that £1850 increase from the 2022/2023 service year amounts to an additional £308.33 per flat as there are 6 in the block.
27. In the Applicant's statement, undated, but contained at [p.9-13] of the Applicants bundle, she submits that as of October 2023, there has been no evidence of any fire safety reforms being implemented apart from new notices regarding fire safety. The Applicant furthered these submissions in her oral evidence. She submitted that the Respondent needs to be clearer with the residents as to why there is an increase in reserves and what work they anticipate undertaking. She advised that she would like to see an asset management plan and that residents should be allowed to comment on it. That an increase in communication between the company and the residents would be helpful.
28. The Respondents state that under the lease, the Landlord/Management Company, must ensure that the reserves are at a level that can meet costs expected to be incurred in the future. They refer to a letter that they send on 27th March 2023 to all leaseholders, including the Applicant, which advised them of the estimated service charge for the year. Within that letter, under the heading 'Reserve Fund', they provided an explanation, an extract of which is contained within the Scott Schedule.
29. The letter advises the Leaseholders that no major works are planned in 2023. It goes on to state that due to the fire safety reforms and of the fact that a new Fire Safety Act was coming into force, that they are awaiting guidance, which will provide information on how the requirements of the act are to be met and that they will inform the Leaseholder of the requirements applicable to their building and full costs. They advised that they would look to reduce the

reserve contribution fund following the reserve analysis and when the work relating to the fire safety regulations was complete.

30. The Respondents advise that the reserve element was only increased to cover the costs that might be incurred due to the fire safety reforms, as reserves were at a low level. That they are looking to introduce an asset management plan, which will allow them to accurately cost the contribution to reserves.
31. In her oral evidence Ms. Daniels further advanced the above, she advised that the reserve fund was not at the level that it should be. That due to the uncertainty at the time in respect of the fire safety reform, they were building up the reserves. That surveys were necessary to assess any potential risk. She also advised that other work was planned for the site.
32. She advised that as of the 1st April 2024 the Respondents are no longer the management company for the site.

Item 2 – March 2023 – March 2024 – Cleaning not completed when required or to standard

33. The Applicant states that the cleaning in the communal area is not being carried out as regularly as it should. That the cleaning schedule is signed off, when it has not been cleaned. That she has reported this to the site manager but nothing has been done.
34. The Applicant states that the sum charged for cleaning is £299 divide by the 6 flats, so £49.83.
35. The Applicant in her written statement, undated and contained at [p.9-13] of the Applicant's bundle, she states that a cleaner had not attended for an entire month between 12th September 2023 and 12th October 2023. She states that the cleaning had clearly not been done as dirt was not being cleaned up. She states that when she challenged this with the site manager, that he advised that the cleaner had forgotten to sign off the schedule. She further states that on the same day a cleaner attended and did a rush job and backdated the schedule [p.36] Applicants bundle. The Applicant states that they only require the cleaner to vacuum, clean the surfaces in the communal area.
36. In her oral evidence the Applicant further advanced her above submissions, referring the Tribunal to [p.36] of the Applicants bundle. She submitted that the cleaning should take place on a weekly basis. That issues were reported to Mr. John Hamilton via WhatsApp or orally and that there would be on average a complaint every 2/3 months. That there was no clearing over the Christmas period for approximately 6 weeks.
37. The Respondent states that the cleaning is regularly reviewed by the Development Manager, John Hamilton and the Assistant Development Manager. That the budget is for a fortnightly clean and that whilst the Applicant states that it should more frequent, that it is not provided for within the service charge budget. That if a weekly clean were to take place, that this would increase the costs to the Applicant.
38. The Respondent states that if on the rare occasion they received a report that that a block has not been cleaned, that they would investigate and arrange a re-clean if required. They state that the Applicant has not produced any evidence to substantiate the allegation and that her challenge is speculative.

39. Ms. Daniels confirmed that the residents are charged for fortnightly cleaning and not weekly, even though the preamble to the budget statement, states that the allowance in the budget is for weekly cleaning [p.309]. That a general clean is undertaken of the communal areas, 28 blocks and that she was not aware of any complaints.
40. Counsel for the Respondent, Mr Donaldson asked the Applicant if she had any photographs to evidence the issues with cleaning, she advised that she did not. He also asked for specific examples where the Applicant thought that the cleaning was not up to standard. The Applicant advised that it was in general terms, people coming in with muddy shoes and that the area is not big and there is very little to do, that she just required basic cleaning.

Item 3 – March 2023 – March 2024 – Excessive Management Fees

41. The Applicant states that the fees for the estate management fees are excessive as they pay per block. The fees are £39,951, based on 300 paying residents, there is a figure of £133.17.
42. In her oral submissions the Applicant stated that she has concerns over the management fees and what they are for. She referred to [p.22] of the Applicants bundle, stating that in 2021 - 2022 the fee was £35,201 but in 2023-2024 on [p.25] of the Applicants bundle, that it has increased to £39,951.00. When asked by Mr. Donaldson whether she accepted the management fees she advised that there need to be transparency. She was referred to [p.144], which is a leaflet from the Respondent to the residents regarding the site and in particular she was referred to [p.149] which has a header 'Explaining Management Fees' with detail regarding the fees set out underneath.
43. The Respondent states that the management fee is payable under the Lease and the amount changes depending on the needs and demands of the development each year. That they must increase given the rise in cost of servicing and inflationary pressures. The Respondent clarified that there are 539 properties. The Applicant questioned whether these items listed were being undertaken.
44. They provide a document [p.144-157] setting out the services that are provided under the management fee. The Respondent states that if the Applicant breaks the fee down into a daily rate, that it can be seen that the fee is very modest.
45. The Respondent states that the onus is on the Applicant to prove that it is unreasonable, by providing comparable quotes. They submit that these have not been provided and that the challenge must fail.
46. The Applicant questioned Ms. Daniels as to why there is an estate charge and management charge.

Item 4 – March 2023 – March 2024 – No ground maintenance

47. The Applicant states that ground maintenance was not carried out. That there was sporadic cover due to staff leaving and that the site was in a mess despite residents raising repeated reports with the site manager. She states that there were weeds growing everywhere and that trees and bushes were not maintained and litter was not picked up.
48. The Applicant states that the ground maintenance for the service year is £25,000, which divided by 300 properties is £83.33 per property.

49. The Applicant relies on photographs contained in the bundle [p.33-37]. The Applicant in her written statement, undated and contained at [p.9-13] of the Applicant's bundle, states that many residents have spoken to and carried out walk-arounds with site manager, where they point out the same thing repeatedly and that the vast majority are still unresolved.
50. The Applicant further the above submissions in her oral evidence, she referred the Tribunal to the preamble to the budget statement [p.192] where it states that the figures for the ground maintenance is for 20 visits a year. She then referred the Tribunal to [p.29-p.33] of the Applicants bundle which contains photographs of the site. She also stated that residents had complained to John Hamilton via WhatsApp.
51. She was questioned by Mr. Donaldson as to whether she had made a formal complaint or whether she had copies of the messages. She confirmed that she did not. She also confirmed that there are no minutes of the walkarounds undertaken, that there might be notes, but that she does not have a copy and she had not been in attendance. That the damage to the brick work had been like that for years. She clarified that the planters belonged to the management company.
52. The Respondent state that they hired a grounds maintenance member who started on the 1st May 2023. They provide photographic evidence [p.158-183] of the work carried out. That on 2nd June 2023, this member of staff left the business and that after this period the assistant development manager continued by himself to tend to the grounds. The Respondent states that a new grounds maintenance member was hired on 10th July and that they are making good progress on the grounds. They further state that residents were not being billed for any period that a grounds maintenance member was not employed on site i.e. from 25 March 2023 to 30 April 2023 and from 3 June 2023 to 9 July 2023.
53. Ms. Daniels advanced the above submissions, she also advised that the maintenance comprises of weed clearance, maintaining the planters, cutting the grass, repairing walls/curbs and trimming of the trees.

Item 5 – March 2023 – March 2024 – No rubbish removal/bin store cleaning

54. The Applicant states that the bin stores are a not kept clean and that bin store cleaning was previously budgeted for but has been removed and rubbish removal added. The Applicant states that no rubbish removal has taken place.
55. That the cost per block for the service charge year is £220 between the 6 flats, which is, £36.60.
56. The Applicant states in her statement [p.9-13] of the Applicants bundle, that a resident of Bellerphon Court complained again in October 2023 regarding the cleaning of the bin store. The caretaker was instructed to deal with the matter. She states that there are 3 bin stores at Bellerphon and that remain in a disgusting mess and have been so for years.
57. The Applicant relies on photographs of the bin store, dated April 2023 [p.34] Applicant's bundle.
58. In her oral evidence, the Applicant further advanced the above submissions, she stated that she would expect the bin stores to be jet washed and that when there is a spillage, the caretaker does no clear this up. When challenged by Mr. Donaldson that residents also have a

responsibility to keep the store tidy, she accepted that some residents could do better, particularly in respect of their food waste.

59. The Respondent refers to the before and after photos [p.184-185] which they state confirms that the bin store it is being cleaned. They state that the bin stores are often left by residents in an unacceptable state, for which they must bear some responsibility. That the Assistant Development Manager conducts a weekly clean up in line with his job description for the site. The Respondent submits that the Applicant's challenge is a bare one, without any evidence of unreasonableness, that the onus being on them to substantiate their challenge. That cleaning and rubbish removal is a service charge matter/item, which is not in dispute.
60. Ms. Daniels in her evidence confirmed that the bins are not jet washed, that the caretaker is responsible for sweeping the bin stores.

Item 6 – March 2023 -2024 – Excessive management fee

61. The Applicant states that the management fee is more than 20% of what is budgeted for maintenance (reserve contribution aside). She states that as the residents don't receive most of what is budgeted for, that this is excessive given that we don't receive most of what is even budgeted for this is excessive. The Applicant states that the fee is £1336 and 50% of that fee, £668 should be returned, which works out as £111.33 per flat in the block.
62. The Respondent states that their response is the same as set out in item 3.

Item 7 – March 2022 – March 2023 – Reserve account increase

63. The Applicant states that the contribution to reserves has increase from £2150 to £3150 within this service year and that the only justification provided for this was 'potential fire safety reform'. She states that work was not carried out at the property block.
64. The Applicant states that the increase from the previous service year is £1000, which between the 6 flats within the block is £166.60.
65. The Respondents refer to a letter that was sent to residents [p.185-187], which is not repeated in full here, setting out that they are increasing the contribution to the renewals reserve in line with the new Fire Safety Act that they were waiting on becoming law. That due to the uncertainty of the legislation, they felt it was important to plan ahead. They state that due to the unknown impact and to keep costs manageable, they wanted to add estimated costs into the budget to enable them to collect funds over the following couple of years. That being proactive, they would be able to collect a smaller amount spread over the budgets.
66. Both the Applicant and Respondent confirmed that the same submissions were advanced as set out under item 1.

Item 8 – March 2022 – March 2023 – Multiple items budgeted for but not completed

67. The Applicant states that for 35-40 Bellerphon Court, the following items were budgeted for but not completed:

Carpet cleaning £130
Drain and gulley cleaning £75

Gutter cleaning £70
Window cleaning £120

68. The Applicant states that the total of these items divided by the 6 flats works out at £65.83 per flat.
69. The Respondent states that the above listed items have not be charged as part of the service charge – invoice return check.
70. Ms. Daniels confirmed that the above were never charged, the Applicant asked for confirmation of this, Ms. Daniels stated that this could be provided.

Item 9 – March 2022 – March 2023 – Multiple items budgeted for but not completed (estate)

71. The Applicant states that the grounds maintenance of £20,000 was charged but the work was not completed, which works out as £66.67 per 300 properties.
72. The Respondent states that for the year 2022 - 2023 a grounds maintenance member was not hired for the site, however on two occasions during the year they hired contractors to tend to the grounds. The two dates were June 2022 - Mainstay contractor and October 2022 - Enviro.
73. Ms Daniels confirmed that during this period that they lost the person employed for grounds maintenance, that due to this there as ad hoc maintenance. That there was significant costs to bring contractors in. She stated that there was overspend.

Item 10 – March 2022- March 2023 – Excessive management fees

74. The Applicant states that the management fees for the estate are excessive. She states that £39,102 divided per 300 properties is £130.34.
75. The Respondent states that there are 539 properties and not 300 as submitted by the Applicant
76. The Respondent refers to their response as set out under item 3.
77. The Applicant and the Respondent confirmed that the same arguments are advanced as set out under item 3.

Item 11- March 2021- March 2022 – Multiple items budgeted for but not completed

78. The Applicant states that the following Items budgeted for but not completed at Blocks 35-40 Bellerphon Court:

Carpet cleaning £180
Drain and gulley cleaning £75
Gutter cleaning £40
Window cleaning £15

79. Which the Applicant states amounts to £51.67 per flat

80. The Respondent states that carpet cleaning and drain and gulley cleaning were not carried out and that residents were not charged as part of the service charge.
81. The Applicant in her evidence stated that she had not seen any invoices for the gutter or window cleaning and that she had seen no physical evidence that these had been undertaken.
82. Ms. Daniels confirmed that the work had been undertaken and that she could provide the invoices.
83. Ms. Daniels confirmed that the carpet cleaning and drain and gulley cleaning were never charged, the Applicant asked for confirmation of this, Ms. Daniels stated that this could be provided.

Item 12- March 2021 – March 2022 Multiple items budgeted for but not completed (estate)

84. The Applicant states that the grounds maintenance of £17,500 was charged but not completed. She states that this works out as £58.33 per 300 properties
85. The Applicant in her oral evidence stated that the ground maintenance had not been completed. When challenged by this by Mr Donaldson, she advised that she did not have any evidence or photographs for this period. She referred to the photographs as set out under item 9.
86. The Respondent states that the service charge accounts evidence the expenditure for grounds maintenance. That the cost per resident is very modest. They submit that the Applicant's challenge is a bare one, without any evidence. They further submit that the onus is upon the Applicant to evidence any allegation of unreasonableness and that this has not been done.
87. Ms. Daniels confirmed that there are 539 properties not 300.

Item 13 – March 2021 – March 2022 - Excessive Management fees

88. The Applicant states that the management fees for the estate are excessive, stating that they pay per block and that £37,201 divided per 300 properties works out as £124.00.
89. The Respondent refers to their response contained under item 3.
90. Both the Applicant and Respondent confirmed that the same arguments were advanced as under item 3.

Item 14 – March 2020 – March 2021 – Multiple items budgeted for but not completed (block)

91. The Applicant states that many contractors could not attend site, but that the funds were not returned to the residents but were instead credited into the reserve funds.
92. The Applicant states that this amounts to £1533 for her block, which works out as £255.50 per flat.
93. The Respondent states that the Leaseholders is only charged for services they receive. The Lease machinery requires any overall over budget after year end accounting is to be credited to the respective leaseholders. They accept that this was not done for this service year due to error

and it was put in reserves. They apologise for this error and confirm that the money will be credited to the leaseholders.

94. The Respondents rely on a reserve analysis [p.189]

Item 15- March 2020 – March 2021 – Multiple items budgeted for but not completed (estate)

95. The Applicant states that the grounds maintenance is £15,105, which works out at £50.35 for 300 properties and that this work is incomplete.
96. In her oral evidence the Applicant accepted that she did not have any photographic evidence to demonstrate that the work was incomplete.
97. The Respondent states that the service charge accounts evidence the expenditure for grounds maintenance and thus the servicing. That the cost per resident is very modest. The Respondent submit that that Applicant's challenge is a bare one, without any evidence and that the onus is upon the Applicant to evidence any allegation of unreasonableness and that this has not been done.

Item 16 – March 2020 – March 2021 – Excessive management fees

98. The Applicant states that the management fees of £34,443 are excessive as they already pay per block. She states that each of the 300 properties has to pay £118.67
99. The Respondent refers to their response under item 3
100. Both the Applicant and Respondent confirmed that the same arguments were advanced as under item 3.

Item 17 – March 2019 – March 2020 – Multiple items budgeted for but not complete

101. The Applicant states that in this year there was a significant underspend with multiple items not carried. That many items were not carried out, but instead of being given a refund, the excess was put into both the cyclical maintenance and the renewals sinking fund.
102. The Applicant states that the under spend for the block was £712, which for each of the 6 flats works out as £118.67.
103. The Respondent provides the same response as set out under item 14.
104. Both the Applicant and Respondent confirmed that the same arguments were advanced as under item 14.
105. In total the Applicant claims that she has overpaid the service charge by £1925.50 for the reasons set out above.

Submissions

106. At the end of the evidence the Tribunal heard submissions from both parties.

107. The Applicant submitted that the management of the site needs to be improved as costs on site have escalated significantly. She stated that there needs to be better communication and regular meeting held with John Hamilton. She further stated that invoices had been requested but never received.
108. Mr Donaldson, Counsel on behalf of the Respondent stated that a two stage test must be applied as to whether the service charges are reasonable, the costs must be reasonably incurred and the works or services must be of a reasonable standard. It submitted that there has been no market evidence before the Tribunal to show comparability to similar blocks of flats. That the Applicant has not put the Respondent to proof that the services provided are inadequate.
109. In respect of the s.20C application Mr Donaldson submitted that this must fail and legal costs should be awarded as part of the service charge. That it would be unfair on the Respondents if leaseholders were able to make a claim and the Respondents were unable to recover their legal costs under the lease.
110. The Applicant submitted that it would be inappropriate to expect the leaseholders to cover the legal fees.
111. The issue was raised by the Tribunal regarding the compliance of the service charge demands with Section 47/48 of the Landlord & Tenant Act 1987 and with section 21B of the Landlord & Tenant Act 1985 and Schedule 11 paragraph 4 of the Commonhold and Leasehold Reform Act 2002 and the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007, was not considered by the Tribunal.
112. Mr Donaldson stated that the Tribunal were unable to consider the issue due to the Order of the Tribunal dated 5th February 2024 which states that the application is limited to the items contained within the Scott Schedule.
113. At the conclusion of the hearing, the Tribunal panel convened. Having discussed the evidence and issues raised during the hearing, the Tribunal concluded that they required clarification on the number of units on site as the Respondent states that there are 539, whereas the Applicant was using a global figure of 300.
114. The Tribunal also required evidence by way of invoices to demonstrate that the gutter and widow cleaning were undertaken in the service charge year 2021-2022. Ms. Daniels, during her evidence had confirmed that these could be provided.
115. The Tribunal issued a Further Directions Order requesting the above information.

The Decision

116. The panel reconvened on 29th May 2024 in order to discuss the case, having by this time received confirmation from the Respondents that the site was made up of 539 units and also having received copies of the invoices for the gutter and widow cleaning for the service charge year of 2021-2022.
117. The Tribunal has carefully considered both the written and oral evidence and submissions made by the parties.

118. The Applicant did not dispute that the heads of expenditure in issue fell within the scope of the service charge provisions in the Lease, and the Tribunal was satisfied that in principle such expenditure, actual or anticipated, was permissible. As to whether the expenses were reasonably incurred or services or works were carried out to a reasonable standard, in the first instance the onus is on the Applicant to evidence such matters that might lead to a financial adjustment.
119. The Tribunal also accepted that in respect of advance charges it is limited to considering whether the payments sought on-account are reasonable in the circumstances pertaining at the time the relevant budgets were set, not with the benefit of hindsight, see: **Knapper v. Francis [2017] UKUT 2 (LC)**.

Item 1 - March 2023 – March 2024 – Reserve account

120. Paragraph 16 at P.45 of the Lease makes provision for the lessor or managing agents to accumulate a reserve fund. The Tribunal has seen a letter from the Respondent dated 27th March 2023 advising residents of the need to increase the amount payable into the reserve fund due to potential fire safety reforms. The Tribunal heard oral evidence from Ms. Daniels who explained that due to the reserve funds being low over the previous years, they needed to increase the amount to cover potential expenditure. The Tribunal note that there has been an increase in the payment to the reserve fund across the site.
121. The Tribunal note that an asset management plan was being considered by the Respondents, which the Tribunal believe would be of great assistance to the residents in understanding how the money held in the reserves is intended to be spent. However, the Tribunal raised concerns that a Planned Preventative Maintenance Program (PPMP) was not already in place which would not only assist in assessing the funding required for day to day maintenance but also sums necessary to be allocated to a reserve funds for 'major repairs'.
122. The Tribunal are aware that the Respondent no longer manages the site and would encourage the new management company to introduce such a plan.
123. The Tribunal, taking all of the circumstances into account do not find the increase from £3150 to £5000 in the reserve fund excessive.

Item 2 – March 2023 – March 2024 – Cleaning not completed when required or to standard

124. The Tribunal has seen no evidence that the cleaning during this service year was not always completed on a fortnightly basis or when it was that it was not up to standard. The Tribunal note that in the preamble to the budget statement [p.309] that it does state that cleaning should be done on a weekly basis, but accept the evidence of Ms. Daniels that the cleaning is carried out on a fortnightly basis and charged accordingly. Accordingly, the costs are considered reasonable and are allowed.

Item 3 – March 2023 – March 2024 – Excessive Management Fees

125. The management fees for this service year is £39,951.00 for the site and is payable under the Lease.
126. Having considered the services provided under the management fee [p.144-157], the Tribunal do not find these charges excessive. The Tribunal finds that these costs have been reasonably

incurred and have seen no evidence to suggest that the service provided was anything other than reasonable.

Item 4 – March 2023 – March 2024 – No ground maintenance

127. The Tribunal had the benefit of photographic evidence before it from the Applicant [p.33-37] of the Applicants bundle which are dated April 2023 – October 2023. The Tribunal also undertook their own site visit on 15th April 2024, whilst it is noted that this was outside the service charge year in question, the date is close to the end of the service charge year.
128. The Tribunal accept the evidence of Ms. Daniels that the wall contained at [p.29-30] is not within the ownership of the Landlord and is therefore not the responsibility of the Respondent.
129. The Tribunal also accept the evidence of the Respondent that by the residents were not charged from 25th March 2023 to 30th April 2023 and from 3rd June 2023 to 9th July 2023. However having considered the photographic evidence and our own observations on site, the Tribunal concludes that maintenance was generally sub-standard.
130. Accordingly, the Tribunal allow a reduction of 50% to the sum demanded.

Item 5 – March 2023 – March 2024 – No rubbish removal/bin store cleaning

131. The Tribunal has seen photographic evidence from both the Applicant and the Respondent, as well as observing the bin store during their site visit.
132. The Tribunal heard evidence from Ms. Daniels regarding the charge to residents for the cleaning of the bin store and what is included as part of that charge. The Applicant accepts that the responsibility to use the bin store correctly lays with the residents.
133. The cost for the cleaning of the bin store is modest at £36.60 per service year, per resident at the premises and that the level of cleaning is reflected in the low cost. Residents must accept some responsibility for ensuring that their rubbish is correctly deposited in the provided receptacles, to minimise any escape of waste.
134. These costs are allowed.

Item 6 – March 2023 -2024 – Excessive management fee

135. For the reasons set out above, under item 3, the Tribunal do not find that the management fees are excessive.

Item 7 – March 2022 – March 2023 – Reserve account increase

136. The Tribunal notes that the increase of the reserve funds in this service year is from £2150 to £3150. The Respondent wrote to residents [p.185-187] to advise that the increase was due to new fire safety legislation that was expected to be introduced. As the Respondents were unsure of how this would impact the site, they were building up the reserve funds.
137. The Respondent also made similar representations regarding the need to build up the reserve fund as it had been low over previous years.

138. The Tribunal having taken all matters into consideration do not find the increase from £2150 to £3150 for the block at 39 Bellerphon Court, to be excessive.

Item 8 – March 2022 – March 2023 – Multiple items budgeted for but not completed

139. Given the Respondent did not charge the Applicant for the works that were not undertaken listed within this item, the Tribunal do not find that these costs were unreasonable.

Item 9 – March 2022 – March 2023 – Multiple items budgeted for but not completed (estate)

140. No evidence submitted by applicant.
141. However based on the Respondents own evidence, the Tribunal concluded that 2 visits was not adequate for the size of the development and for the adequate maintenance of the grounds.
142. Accordingly, the Tribunal allow a reduction of 50% to the sum demanded.

Item 10 – March 2022- March 2023 – Excessive management fees

143. The management fees for this service year are £39,102 between 539 properties. Tribunal do not find that the management fee was excessive, for the reasons set out under item 3.

Item 11- March 2021- March 2022 – Multiple items budgeted for but not completed

144. The Tribunal accept that the carpet cleaning and gulley cleaning were not carried out and that residents were not charged for these services.
145. As a result of the Further Direction Order dated 25th April 2024 the Respondent has demonstrated to the Tribunal that they incurred the costs for gutter and window cleaning, which are reasonable costs within the service charge.

Item 12- March 2021 – March 2022 Multiple items budgeted for but not completed (estate)

146. The grounds maintenance for this year was £17,500 between 539 properties. The Applicant did not produce any evidence to demonstrate that the ground maintenance was not completed or where it was it was not of a standard.
147. The Tribunal do not find that the service charge for ground maintenance was not reasonably incurred and have no evidence before it that the work was not of a reasonable standard. Accordingly, these costs are allowed.

Item 13 – March 2021 – March 2022 - Excessive Management fees

148. The management fees during this service year period were £37,201 between 539 properties.
149. The Tribunal do not find these fees excessive for the reasons set out under item 3.

Item 14 – March 2020 – March 2021 – Multiple items budgeted for but not completed (block)

150. The Respondent accepted that not all of these costs were incurred as contractors could not attend site during this period due to the pandemic and that the funds were to be returned to the residents, but in error were placed in the reserve funds.

151. The Lease allows for funds to be returned to the Leaseholders where there is underspend. The Respondents advised that they will rectify the issue and return the funds to the Respondent.

Item 15- March 2020 – March 2021 – Multiple items budgeted for but not completed (estate)

152. The grounds maintenance for this year was £15,105 between 539 properties. The Applicant did not produce any evidence to demonstrate that the ground maintenance was not completed or where it was it was not of a standard.
153. The Tribunal do not find that the service charge for ground maintenance was not reasonably incurred and have no evidence before it that the work was not of a reasonable standard.

Item 16 – March 2020 – March 2021 – Excessive management fees

154. The Applicant states that the management fees of £34,443 are excessive.
155. For the reasons set out in item 3 above the Tribunal do not feel that these fees are excessive in the circumstances.

Item 17 – March 2019 – March 2020 – Multiple items budgeted for but not complete

156. The Respondent accepted that not all of these costs were incurred and that some of the funds were to be returned to the residents, but in error were placed in the reserve funds.
157. The Lease allows for funds to be returned to the Leaseholders where there is underspend. The Respondents advised that they will rectify the issue and return the funds to the Respondent.

Service charge demands

158. Section 21B(1) of the 1985 Act requires that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, the form and content of which is prescribed by regulations made under section 21B(2). In the present case, the relevant provisions are the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007.
159. On 11th July 2023 the Tribunal issued procedural Directions, as part of these directions the Tribunal that the Respondent under paragraph 5(e):
- (ii) an explanation of how the Service Charge and Administration Charge demands comply with Section 47/48 of the Landlord & Tenant Act 1987 and with section 21B of the Landlord & Tenant Act 1985 and the Lease.
 - (iii) An explanation of how the Administration Charge demands comply with Schedule 11 paragraph 4 of the Commonhold and Leasehold Reform Act 2002 and the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007.
160. On 18th August 2023 the Tribunal issued an Amended Directions Order, which again set out the above directions. These were not complied with by the Respondents.
161. On 31st January 2024 the Tribunal convened to hear submissions from both parties regarding preliminary issues, which will not be dealt with in this decision in any great detail. One of the

issues deal with was an Application by the Applicant to extend the claim before the Tribunal to include further items on the Scott Schedule which had not been raised at the time of compliance with the disclosure directions.

162. On 5th February 2024 an Order was issued by the Tribunal, followed by a written decision on 12th April 2024. The Order stated that the application before the Tribunal was limited to the items as set out in the Scott Schedule, this Order as stated was given in response to the issues raised and considered on 31st January 2024.
163. During the hearing on 31st January 2024 the issue of the service charge demands and their compliance with Section 47/48 of the Landlord & Tenant Act 1987 and with section 21B of the Landlord & Tenant Act 1985 and Schedule 11 paragraph 4 of the Commonhold and Leasehold Reform Act 2002 and the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007, was not considered by the Tribunal.
164. The Tribunal has considered the submissions made by Mr Donaldson, Counsel for the Respondent and it is there view that the Order of the 5th February 2024 does not preclude the Tribunal from considering this issue as it has to apply its mind to it before now. Also the fact that the Applicant has not raised the matter, does not prevent the Tribunal raising it and considering it.
165. The service charge demands are contained at [p.354-407]. Turning to the 'Service Charges Summary of tenants' rights and obligations', they are not in compliance with Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007, in that they refer to the First Tier Tribunal and they do not contain the Welsh language version of the obligations.
166. As these service charge demands do not comply with the above requirements, s.21B of the Landlord and Tenant Act 1985 is applicable which states:
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
167. However the demands for service charge payments have been made within the 18 month limitation under s.20B of the 1985 Act, so will be liable to be paid if new service charge demands are issued that do comply with the above provisions.

Application under s.20C of the 1985 Act

168. Part II of the Fourth Schedule, paragraph 13 of the Lease p.[100-101] deals with the costs legal costs recoverable by the Lessor, under the said lease.
169. In respect of the application by the Applicant the Tribunal have determined that the application succeeds and that the costs will not fall to be paid under the service charge.
170. The reason for this is that the Tribunal has adjusted the amount of service charge deemed payable under two of the items contained in the Scott Schedule. What has been apparent throughout these proceedings is the lack of clarity given to the Applicant around why certain payments on the increase in payments are being demanded, for example the increase in reserve funds. The absence of an asset management plan and a Planned Preventative Maintenance Program is attributable to poor management which is admitted by First Port. If there was an

asset management plan in place this would have helped the Applicant understand why there was an increase, rather than just referencing fire safety reforms. Accordingly it was reasonable for the leaseholder to raise concerns.

171. It is for these reasons that the Tribunal allows the s.20c application as the Tribunal feels that it is just and equitable in the circumstances.

Dated this 8th day of August 2024

A handwritten signature in black ink, appearing to read 'K Byrne', written in a cursive style.

Tribunal Judge K Byrne