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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0008/05/24

In the Matter of premises at 34 Cei Tir Y Castell, Barry, CF63 4DG

And in the matter of an Application under section 27A and section 20C of the Landlord and Tenant Act 1985

Applicant:	**Melissa Ledwidge**
Applicant's Representative:	**In person**
Respondent:	**Hafod Housing Association Limited**
Respondent's Representative:	**Owain James of counsel**
Tribunal:	**Colin Green (Chairman)** **Neil Martindale (Valuer)** **Bill Brereton (Lay member)**
Date of Hearing:	**27 September 2024 and 9 January 2025** **via Microsoft Teams**

DECISION

(1) Subject to the service of a valid demand and compliance by the Applicant with the provisions of sections 47 the Landlord and Tenant Act 1987 and section 21B of the Landlord and Tenant Act 1985, the Tribunal finds in respect of the following service charge items for 2024, as identified in the Scott Schedule, as follows:

Item 1: Not recoverable

Item 2: Allowed in full

Item 3: Not recoverable

Item 4: Not recoverable

Item 5: Allowed but reduced by 50 per cent

Item 6: Not recoverable

Item 7: Allowed in full

Item 8: Allowed in full

Item 9: Not recoverable

(2) In respect of section 20C of the 1985 Act, the Respondent cannot recover any costs incurred in respect of these proceedings from the Applicant by way of service charge.

REASONS

Introduction

1. This is an application by the Applicant, Miss Ledwidge, under s. 27A of the Landlord and Tenant Act 1985 concerning the service charge payable by her in respect of her flat, 34 Cei Tir Y Castell, Barry, CF63 4DG, raised in the year 2024. The flat forms part of a block, 27 to 34, and is on the third, top floor.

2. The freeholder to the block is Hafod Housing Association Limited ("Hafod"), the Respondent, which owns this and a number of blocks on the Barry Waterfront site. The precise extent of the site is unclear but the Tribunal was informed that there are freehold covenants in place (possibly under a s. 106 agreement) which provide for contributions by the various freeholders on the site, including Hafod, to charges that are managed by Remus Management Limited ("Remus"). The Tribunal was not provided with copies of the relevant covenants or any other details of how they operate, but it would appear from invoices from Remus that it is the managing agent for the following management

companies: Barry Waterfront Residents Management Company Limited in respect of estate service charges and Westhaven Apartments (Barry) Residents Management Company Limited in respect of block service charges.

3. By a tenancy agreement dated 5 March 2019 ("the 2019 Agreement"), Hafod demised flat 34 to Miss Ledwidge on an assured shorthold weekly tenancy. The 2019 Agreement was superseded by a converted secure occupation contract of 16 May 2023 made under the Renting Homes (Wales) Act 2016.

4. The hearing of this matter initially took place on 9 January 2025 with evidence provided by Martin Webb, the Service Charge and Leasehold Manager at Hafod responsible for overseeing Miss Ledwidge's service charge. Matters were not completed and during the day it became apparent that notwithstanding the terms of paragraph (5) b) of the Tribunal's directions of 7 May 2024 ("the Directions"), Hafod had not made a full disclosure of invoices relevant to the computation of the service charge in issue. Accordingly, directions were given for further disclosure prior to the adjourned hearing on 9 January 2025, which was by way of a further statement from Mr. Webb with exhibits, and an additional bundle of invoices disclosed shortly before the further hearing. A site inspection was not considered necessary.

5. At both hearings Miss Ledwidge appeared in person and Hafod was represented by Owain James of counsel. Both Miss Ledwidge and Mr. Webb gave evidence and were asked questions by both the other party and members of the Tribunal panel.

Service charge provisions

6. Clauses 1.4 and 1.5 of the 2019 Agreement provide as follows:

> *"1.4 The Association will provide the following services in connection with the Premises for which the Tenant shall pay a service charge ("the Service Charge"): Electricity/Water/Cleaning/Landscaping/Communal Window Cleaning only/Clothes Lines/Skip Hire & Bulky Waste/Communal Lighting/Intercom Systems/Fire Equipment/Emergency Lighting/Repairs to digital Aerials/Repairs to Equipment/Estate Management Charges*
>
> *The Service Charge will be reviewed in accordance with clause 1.5 below.*

The Association reserves the right to vary the services in consultation with Tenants. If the services provided are varied pursuant to this section the Association may as a result vary the Service Charge in accordance with clause 1.5.

1.5 The Service Charge is variable and will be reviewed not more than once in every period of 26 weeks on the basis of the actual or estimated costs of the services provided under clause 1.4. The Association will notify the Tenant of any increase or decrease in the service charge by giving at least one month's notice in writing.

The Association will make the service charge calculation available to the Tenant on request.

The Association will not be liable for any losses caused as a result of the failure or breakdown of the services provided pursuant to clause 1.4 if such breakdown of [sic] failure was not the fault of the Association."

7. The provisions in respect of services were repeated in the occupation contract in the following terms:

"1A. (1) The landlord shall provide the following services in connection with the dwelling as set out in the tenancy agreement for the tenancy which converted into this contract for which you shall pay a Service Charge ('the Service Charge'). The Service Charge will be reviewed in accordance with term 1A(2) below. The landlord reserves the the right to vary the services in consultation with contract-holders. If the services provided are varied pursuant to this section the landlord may as a result vary the Service Charge in accordance with term 1A(2). Any variation of the terms of this contract will comply with term 60.

(2) The Service Charge is variable and will be reviewed not more than once in every period of 26 weeks on the basis of the actual or estimated costs of the services provided under term 1A(1). The landlord will notify the contract-holder of any increase or decrease in the Service Charge by giving at least one month's notice in writing. The landlord will make the Service Charge calculation available to the contract-holder on request.

(3) The landlord will not be liable for any losses caused as a result of the failure or breakdown of the services provided pursuant to term 1A(1) if such breakdown of failure was not the fault of the landlord."

8. The service charge provisions have been operated in the following way. The service charge year runs from 1 April in one calendar year to 31 March in the following year. It is reviewed only once each year and is based on the actual expenditure for a period

of 9 months and estimated expenditure for the final 3 months in respect of recurring items such as electricity. In the following service charge year estimated items are reconciled against actual expenditure and a corresponding debit or credit provided. The total charge for the block is divided by eight to arrive at the service charge contribution for each flat.

Demands

9. A rent and service charge increase notice in respect of flat 34 was served by Hafod dated 25 January 2024, being a total weekly payment of £184.22, which included a service charge of £76.06, producing a total monthly payment of £798.29, alternatively a four weekly payment of £736.88.

10. An amended notice was served dated 26 February 2024 with revised figures: a total weekly payment of £159.05, which included a service charge of £50.89, producing a total monthly payment of £689.22, alternatively a four weekly payment of £636.20. The notice was served more than one month before the date for payment:1 April 2024. It is this service charge that Miss Ledwidge has challenged.

Issues

11. Paragraph 2 of the Directions provided that:

> *"The tribunal has identified that the issues to be determined are likely to include (though these may be amplified by the parties in their statements of case);*
>
> *1. The service and administration charges payable for the service charge years.*
>
> *2. Whether the requirements of Section 21B of the 1985 Act have been complied with and the Service and administration charges have been properly demanded*
>
> *3. Whether the costs are payable by reason of section 20B of the 1985 Act.*
>
> *4. Whether any administration fees claimed are reasonable and payable.*
>
> *5. Whether an order under section 20C of the 1985 Act should be* made."

12. Some of these issues can be disposed of briefly.

(1) Service charge matters will be dealt with below by reference to the Scott Schedule. Administration charges are defined as including an amount payable directly or indirectly in respect of a failure by the tenant to make payment by the due date to the landlord or a person who is party to the lease other than as landlord or tenant, or in connection with a breach (or alleged breach) of a covenant or condition in his lease (paragraphs 1(1)(c) and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002). There are no administration charges in this case.

(2) Section 21B of the Landlord and Tenant Act 1985 requires a demand for the payment of a service charge to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. In Wales, the relevant provisions are the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 which provide that the statutory information must be on both Welsh and English. The demand of 26 February 2024 did not comply with this requirement. In consequence, Miss Ledwidge is entitled to withhold the service charge until a suitably compliant demand is served, but this does not prevent the Tribunal from determining the recoverability of the service charge, subject to service of a valid demand.

(3) Section 20B of the 1985 Act concerns the non-recoverability of service charge costs incurred more than 18 months before a demand for payment of the service charge is served. Since the demand here was made in February 2024 and is based on costs, actual or estimated as set out above, no items are excluded under s. 20B.

(4) For the reasons given above, there are no administration fees here.

(5) Under s. 20C of the 1985 Act, where the lease permits the recovery of costs as a service charge the Tribunal may order that some or all the costs incurred by the landlord in connection with the Tribunal proceedings are not to be included in the service charge payable by the tenant. The Tribunal may make such order as it considers equitable and regard will be had to what extent the tenant has

been successful and the proportionality of any reductions, together with any other relevant factors. Mr. Webb, on behalf of Hafod, stated that no costs or expenses incurred by Hafod in respect of these proceedings would be passed on by way of service charge. Therefore, the Tribunal has determined that no such costs are recoverable way of service charge against Miss Ledwidge.

13. Paragraph (5) c) (ii) of the Directions also requires Hafod's statement to explain how there has been compliance with sections 47 and 48 of the Landlord and Tenant Act 1987. This was not done, but the position is as follows. Section 48 requires that a landlord shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant. Where there is a failure to do so, any rent or service charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection. Term 70 of the occupation contract provides that any notice to be served on the landlord may be sent to the address shown in the Key Matters of the contract, and the Key Matters provide an address, so that s. 48 has been satisfied.

14. As regards s. 47, this provides that where any written demand is given to a tenant, the demand must contain the name and address of the landlord in England and Wales. If there is a failure to do so any part of the amount demanded which consists of a service charge shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant. Miss Ledwidge accepted that the demand of 26 February 2024 she received was on Hafod's standard notepaper which contained its name and address.

15. Nevertheless, as noted at paragraph 12(2) above, there was no compliance with s. 21B of the 1985 Act in respect of that notice so that any fresh demand, in order to be valid, must comply with both s. 21B and s. 47 of the 1987 Act.

16. At paragraph 3 of Miss Ledwidge's submissions/evidence she raises s. 20 of the 1985 Act due to the lack of prior consultation regarding the extreme increase in the service charge for the previous year. The question of consultation generally will be mentioned below, but in respect of s. 20 requirements for consultation, these are only engaged in

respect of "qualifying works", that is works in respect of which each tenant's contribution is more than £250.00. That is not the case in respect of any of the works here.

Scott Schedule

17. Pursuant to the Directions, a Scott Schedule was prepared consisting of 9 items showing the weekly amount of each item according to the service charge demand, and the percentage amount by which that item had increased since the previous service charge, together with comments from both parties.

18. The service charge costs must be recoverable under the terms of the service charge provisions, set out above, and where a service charge is payable for work that has been done or services performed, then it is only payable to the extent that they were reasonably incurred (s. 19(1)(a) of the 1985 Act) and to the extent that the work or services were to a reasonable standard (s. 19(1)(b)). Initially, the burden is on the tenant to establish a prima facie case that the charge is unreasonable or that the work or service was not to a reasonable standard, and if so the landlord must meet the case. In respect of estimated charges, these are recoverable if they are a reasonable estimate of future costs.

19. The items in the Scott Schedule will be considered in turn.

20. *Item 1* – Skip Hire/Bulky Waste (£689.00). This concerns the bin area used by the tenants of the block. There was a fire at the end of 2022 damaging the bin doors, allowing other persons to have free access to the bins which became full and with rubbish accumulated outside the bins which the refuse collectors have refused to collect. The doors have not been repaired, nor has a code lock system been installed to allow only those authorised to use the bins. To address the issue Hafod arranged for skips to collect the overflow rubbish as a result of fly-tipping and for it to be disposed of. Nevertheless, the problem persists.

21. Although no plan of the precise area owned by Hafod has been produced, Mr. Webb's evidence was that the bin storage area fell outside the curtilage of the block and is not owned by Hafod. The Tribunal accepts such evidence so that the failure to remedy the

risk of fly-tipping is not a breach of Haford's repairing obligations. Any obligation to address this issue would appear to be rest with the relevant freehold management company under a freehold covenant. There is no contractual relationship between Miss Ledwidge and such company, but Mr. Webb stated that Hafod was attempting to have Remus, the freehold managing agent, deal with matters. The Tribunal encourages Hafod to persist in finding a resolution to this issue.

22. Skip hire & bulky waste is a service included in the service charge provisions. As to whether Hafod can charge for such a service in respect of the bin storage area, which it does not own, the views of the Tribunal panel are divided. Mr. Martindale and Mr. Brereton are of the view that this item cannot be recovered by way of service charge as the bin storage area is not owned by Hafod. Mr. Green took a different view, and accepted submissions made by Mr. James on behalf of Hafod. The argument runs as follows. A named service falls within the scope of the service charge provisions if it is "in connection with" the flat. Under clause 4.24 of the 2019 Agreement, the tenant covenants:

> *"To leave refuse only in the bins or facilities provided for this purpose and not to put refuse bags or bins out for collection other than on the day on which they are due to be collected."*

The covenant is repeated at Term 16C of the occupation contract.

23. There would be difficulties in Miss Ledwidge complying with that covenant unless excess rubbish was cleared from the bin storage area. Even without such a covenant, it is clearly of benefit to Miss Ledwidge's flat, and the others in the block, that such steps are taken, and therefore the provision of skips and bulk disposal is "in connection with" the flat, even though the area is not owned by Hafod and does not form part of the common parts.

24. Nevertheless, by a majority the Tribunal will not allow this item.

25. *Item 2* – Fire Equipment/Emergency Lighting (£4.29). Miss Ledwidge had sought clarification as to what exactly was covered by this item but was provided with no detailed explanation. Mr. Webb's evidence was that this charge included the costs of repairs and inspections to all or any emergency lighting, fire alarms, automatic opening

vent windows, and firefighting equipment for the block. There are no fire extinguishers, but he does not believe they are required. He referred to four invoices from Advanced Fire Technologies relating to servicing the fire safety system for the block and replacement of parts, and the estimate for such charges for the final three months of the service charge year.

26. The Tribunal is satisfied that this is a valid service charge cost.

27. *Item 3* – Lighting System (£5.86). After having made enquiries, Mr. Webb accepted that this should not have formed part of the service charge and is not a recoverable item.

28. *Item 4* – Landscaping (£4.81). Miss Ledwidge's complaint concerning this item is that the foliage to the front and back of the building has not been maintained, and that there was no landscaping charge for the previous year. Mr. Webb's response was that the charge is based on invoices from Hafod's grounds maintenance contractor and covers the cost of maintaining external communal areas owned by Hafod that are not the responsibility of Remus. There is a single invoice for this item, apportioned for a nine-month period, from Countrywide Grounds Maintenance Limited, for "Removal of all vegetation along front elevation". Miss Ledwidge's evidence that this was the removal of a hedge in order to excavate pipes or sewers to deal with a rat infestation problem. Mr. Webb was unable to contradict this as the work was carried out before he took up his post.

29. Therefore, although "Landscaping" is included as a service this particular item the was not landscaping work, but part of the work required to address the problem of rats. Although that will have been of benefit to the flats in the block, it is not a service that is identified in the service charge provisions. Therefore, it is not a recoverable item.

30. Two of the three members of the panel also considered this item would not be recoverable as the hedge is likely to have been located on land not in the ownership of Hafod. Mr. Green considers that Mr. Webb's evidence on this point was inconclusive – he did not know whether or not the hedge was in the ownership of Hafod – and therefore does not consider that any proper conclusion can be drawn on the issue of ownership. Nevertheless, on either footing, this item is not allowed.

31. *Item 5* – Cleaning (£6.33). Cleaning of the block is dealt with by an in-house cleaning team and the cost based on cleaning rotas. Miss Ledwidge's complaint is that not all the floors are cleaned to an adequate standard, sometimes only the lower floors are cleaned, and the cleaners often only work for half the time which is billed. Mr. Webb was unable to provide any evidence in respect of this and therefore, Miss Ledwidge's account is accepted. The cleaning costs should be reduced by 50 per cent. It is suggested that in future, Hafod monitors its cleaning services more carefully to ensure that they are being carried out to the appropriate standard.

32. *Item 6* – Admin (£10.18). This represented a 163 per cent increase from the previous service charge year, which has caused Miss Ledwidge some concern. This is a fee charged by Hafod, at 25% for the 2024 service charge, to cover the back office costs of administering the service charges. There is nothing unusual in a landlord or managing agent charging an administration or management fee at either a flat rate or percentage. And as pointed out by Mr. James, in the definition of "service charge" and "relevant costs" in s. 18 of the 1985 Act, "costs" includes overheads (s. 18(3)(a)). The Tribunal accepts that administration costs can be validly included in a service charge, but in order to do so express provision must be made for such costs in the service charge provisions. There is no such provision here and therefore, the Tribunal does not consider that any administration costs can be included in the service charge.

33. *Item 7* – DTD Maintenance Services (£1.03). Miss Ledwidge has sought clarification of what this item relates to. Mr. Webb describes it as a "reactive" cost, which means a cost arising in response to some problem or defect that needed to be addressed rather than a recurring cost, such as electricity or fire inspections. Two charges make up this item: locksmith services to fit and test a new heavy duty door closer due to damage that had been caused, and work required due to the communal door to the block by being forced open by scissors, carried out by Hafod.

34. Understandably, Miss Ledwidge is aggrieved that other occupiers of the block have caused damage for which she and other tenants must pay. Nevertheless, the cost of repair is recoverable as a service charge. The Tribunal notes however, that Mr. Webb stated that if a particular tenant can be identified as the cause of any such damage, Hafod would recharge the cost of repair solely to that tenant.

35. *Item 8* – Equipment Repairs (£0.46). Again, Miss Ledwidge sought clarification. This cost relates to repairing the door entry system which operates by way of an intercom to each flat. This is recoverable.

36. *Item 9* – External Management Company (£8.82). This is a reference to service charges raised by Remus for which Hafod is liable under the relevant freehold covenants and which Remus breaks down for each of Haford's flats. There is a balancing invoice dated 2 May 2023 in respect £75.19 due after a reconciliation in respect of the service charge for the year ending 31 December 2020. A second invoice dated 15 March 2023 in respect of the calendar year 2023 for a sum of £382.22. Presumably, neither of these invoices could be included in the service charge for Miss Ledwidge's flat until the 2024 computation was carried out.

37. The panel members were agreed that this item is not recoverable, but their reasoning differed in one important respect, mentioned below. The difficulty the Tribunal has with such charges is that it is not considered, as a matter of construction of the service charge provisions, that there is an agreement to indemnify Hafod in respect of the entirety of the charges invoiced by Remus for which Hafod is liable under the freehold covenants. Mr. Green is of the view, as mentioned above, that for a service to be included in the service charge for Miss Ledwidge's flat, it must be "in connection with" the flat, even if the service is in respect of land not owned by Hafod but nevertheless has some connection with, or confers some benefit on, the flat. Therefore, although as a matter of principle, it is possible for Remus, as the freehold managing agent, to incur or estimate costs which could properly be regarded as being in connection with the flat, there is nothing in the invoices to indicate in respect of what those costs were incurred.

38. The invoices break down the charges into two categories: Annual Estate Service Charge and Annual Block Service Charge. As to the first, there is nothing to indicate what these services are, but given the size of the estate they could concern costs incurred some distance away; Mr. Webb suggested work to estate roads and grassed areas. Without any further information it cannot be determined which of such services can properly be regarded as being in connection with the flat, if any. Assuming the second category relates to costs concerning the present block (which is by no means certain), there might be a better prospect of services having a connection with the flat, but in the absence of

any detail of what they are or how the total sum has been computed the Tribunal is unable to conclude that they properly fall within Miss Ledwidge's service charge provisions.

39. It would be possible for Hafod to query such charges and obtain particulars of how they are made up, but it would appear not to have done so to date, presumably because it has simply passed the total of these charges on to Miss Ledwidge. In the Tribunal's view, this is not acceptable. If Hafod wishes to include all or part of these charges as falling within her service charge, it must identify what specific costs are in connection with her flat, and if it cannot do so it will be unable to justify the charge.

40. The view taken by the other two panel members was that no cost can be recovered as an Estate Management Charge if the service is not in respect of land owned by Hafod. Therefore, all three panel members were of the view that the evidence was wholly insufficient to justify any recharge of the Remus invoices, but they differed as to the circumstances in which such charges might be recoverable in the future.

41. Accordingly, this item is not allowed.

42. Finally, the Tribunal considers that there are lessons to be learned from these proceedings. They were instigated by Miss Ledwidge because she did not understand what certain items related to and why the service charge had increased by an appreciable amount. A number of the items she queried could have been resolved by production of the relevant invoice(s) at a much earlier stage together with a more detailed explanation of how the cost was incurred.

43. Proceedings such as these might be avoided if there is greater transparency concerning individual service charge items and any queries are dealt with timeously and in a genuinely informative way, where necessary supported by invoices. Also, quite apart from the consultation provisions of s. 20 of the 1985 Act, it would assist if Hafod could consult with its tenants concerning any significant proposed increases in the service charge so that they might better understand the services for which they will be paying.

Dated 31st January 2025

Colin Green (Chairman)