

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0004/05/15 – Greenwood Road

In the Matter of Flats 1,3,5,7,9 & 11 Greenwood Road, Baglan, Port Talbot, SA12 8PR

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985.

TRIBUNAL Mr S Povey
 Mr R Baynham
 Ms J Playfair

APPLICANT Neath Port Talbot Homes

RESPONDENTS Mr Hanford
 Mr Heggie
 Mr Bambridge

ORDER

The application to dispense with all or any of the consultation requirements in relation to the qualifying works is allowed.

Background

1. The Applicant, Neath Port Talbot Homes, is the freeholder of Flats 1, 3, 5, 7, 9 and 11 Greenwood Road, Baglan, Port Talbot SA12 8PR ('the flats'). The Respondents are the leaseholders of Flat 5 (Mr Hanford), Flat 9 (Mr Heggie) and Flat 11 (Mr Bambridge).
2. The Applicant owns approximately 9,200 properties, of which about 600 are subject to long leases. As part of its routine programme of external inspections, the Applicant commissioned a survey on the condition of the flats. The survey report (dated 8th May 2015) recommended the removing of spalling render and concrete and some concrete coping stones. In addition, it was recommended that immediate action be taken to a number of areas of the render to make the building safe, as there was a risk of material becoming dislodged and falling.
3. On 14th May 2015, the Applicant wrote to the Respondents, explaining the surveyor's recommendations for urgent works. The Applicant explained that due to this urgency and the attendant risk to health and safety, the urgent work would be carried out without consultation and an application would be made for dispensation of the requirement to consult. The Applicant estimated that the cost per leaseholder of the urgent works would be in the region of £600.

4. The urgent works commenced on 18th May 2015 and were completed on or around 19th June 2015. The total cost of the work was £4,695. The revised contributions for the Respondents are expected to be £703.46 for Mr Hanford, £725.61 for Mr Heggie and £846.76 for Mr Bambridge (based upon the floor area of each flat).
5. On 19th May 2015, the Applicant applied to the Leasehold Valuation Tribunal ('the Tribunal') for relief under s.20ZA of the Landlord & Tenant Act 1985 ('the 1985 Act'), by seeking a dispensation from all or any of the consultation requirements provided for by s.20 of the 1985 Act.
6. On 10th June 2015, the Tribunal issued case management directions. No response was received from the Respondents ahead of the inspection and hearing, which took place on 10th July 2015.
7. The Tribunal undertook a visual inspection of the flats from the outside. However, as set out above, the urgent works had already been completed. Also in attendance at the inspection were the Applicant's head of Property Maintenance (Mr John), the Maintenance Manager (Mr Booth) and the Finance Manager (Mrs Jones). There was no attendance at the inspection by the Respondents.
8. At the hearing which followed the inspection, the Tribunal heard from Mr John, Mr Booth and Mrs Jones. We also had sight of a witness statement prepared by Mr Booth, the survey report, the letters of 14th May 2015 to the Respondents and the relevant leases. Mr and Mrs Hanford also attended the hearing. It became clear that they had not had sight of the Applicant's bundle of documents. Mr Hanford has inherited the property from his mother and does not live there. As such, the Tribunal heard from Mr and Mrs Hanford but also afforded them an opportunity, upon receipt and consideration of the aforesaid documents, to send in further written submissions for consideration.
9. Mr Hanford emailed Mr John with his further comments on 16th July 2015. Mr Booth replied to those comments on 20th July 2015.

Relevant Law

10. Section 19 of the 1985 Act imposes a statutory limitation on the recoverability of services charges on the basis of reasonableness.
11. By virtue of section 27A of the 1985 Act, the Tribunal has the power, upon application, to determine whether, if costs were incurred for repairs and maintenance, a service charge is payable for those costs and, if it is, the amount which is payable.
12. Section 20 of the 1985 Act limits the amount a leaseholder must contribute to what are known as 'qualifying works'. These are defined as works on a building or other premises that result in a contribution by a leaseholder of more than £250. In those circumstances, the freeholder must consult with the leaseholders before the work is undertaken. The

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

13. In the absence of consultation, the amount that the freeholder can lawfully recover from the leaseholder for the work is capped at £250 (Regulation 6 of the Consultation Regulations).
14. By virtue of section 20ZA of the 1985 Act, the Tribunal has the 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.
15. In *Daejan Investments Limited v Benson [2013] UKSC 14* ('*Daejan*'), the Supreme Court addressed a number of issues regarding how the discretion under s.20ZA of the 1985 Act should be exercised, as follows:
 - 15.1. The purpose of s.19 to s.20ZA is to ensure the Respondents are not required either to pay for unnecessary or defective services, or to pay more than they should for necessary services provided to an acceptable standard. Thus, when considering a s.20ZA(1) application, the Tribunal has to focus on the extent to which the Respondents are prejudiced in those respects by the Applicant's failure to comply with the consultation requirements. It is hard to see why dispensation should not be granted where the failure to comply has not affected the extent, quality and cost of the works;
 - 15.2. Compliance with the requirements is not an end in itself and dispensation is not to be refused simply by reason of a serious breach. The prejudice flowing from the breach is the main, and normally the sole, question for the Tribunal;
 - 15.3. Where the Tribunal is considering prejudice, the legal burden of proof is on the Applicant but the factual burden of identifying some relevant prejudice falls on the Respondents. However, the Applicant cannot complain if the Tribunal views the Respondents' arguments sympathetically and resolves any doubts in their favour. Once the Respondents have shown a credible case for prejudice, it is for the Applicant to rebut it.

The Parties Submissions

16. It is not in dispute that the Applicant failed to comply with any of the requirements of either s.20 of the 1985 Act or the Consultation Regulations. In short, the Applicant's case is that it was bound to act urgently upon receipt of the survey and could not risk any delay given the potential risk to the health and safety of residents and the wider public. It therefore made a management decision to commence the works required to make the flats safe immediately and thereafter seek dispensation from the requirements to consult.

17. In addition, the Applicant submits that the work undertaken without consultation has been limited to that needed to avoid the risk to health and safety. It intends to consult on a wider range of improvement works planned for the flats.
18. Mr Hanford's main contention was that the Applicant could and should have addressed the problems with the render and concrete through regular maintenance, thereby avoiding the need for such urgent works. He also alleged that much of the deterioration to the external skin of the flats (which gave rise to the urgent works) was caused by work carried out some years ago, either by the Applicant or its predecessor.
19. The Tribunal has received no response from either Mr Heggie or Mr Bambridge.

Findings and Conclusions

20. From the Tribunal's inspection, we find that the works undertaken involved the removal of loose brickwork and render. In addition to addressing the loose brickwork and spalling render, the Applicant has erected temporary wooden barriers to a number of the flats' balconies to prevent occupiers approaching the brick exterior, which are also considered to be unsafe.
21. The surveyor's report is unequivocal. It recommends that "*immediate action is taken to make the building safe*". Using our professional expertise, the Tribunal concludes that the extent, quality and cost of the works undertaken is appropriate to the concerns raised in the survey.
22. Mr Hanford argues that this work could have been avoided had the Applicant undertaken regular inspections and carried out planned regular maintenance. It is suggested that the need for these works was contributed to by works undertaken in the past by the Applicant or the previous freeholder.
23. Once the Applicant invoices the Respondents, they have a right (by reason of s.19 of the 1985 Act) to challenge the reasonableness of those charges. Whilst the Tribunal can see some force in Mr Hanford's arguments, what he raises really goes to the question of reasonableness and the amount being claimed by the Applicant. In other words, did the Applicant's alleged failure to properly manage and maintain the flats lead to the Respondents incurring greater costs?
24. Whether the Applicant could have minimised the extent and costs of the works undertaken by managing the flats more vigilantly is a matter properly considered in any application on the reasonableness of the demanded service charges.
25. That is not what we are required to consider in this application. The question for the Tribunal is whether the failure to consult caused any prejudice to the Respondents? In our judgment, given what the Applicant was faced with as at May 2015, given the recommendations of the surveyor and given the extent, quality and costs of the work undertaken to address the safety concerns, we are satisfied that no prejudice was suffered by the Respondents by the Applicant foregoing the consultation requirements.

Decision

26. For the reasons set out above, it is appropriate for the Tribunal to exercise our power under s.20ZA of the 1985 Act, having regard to the facts of the case and the law. As such, the application for dispensation is allowed.

DATED this 14th day of August 2015

A handwritten signature in black ink, appearing to read 'S Povey', with a horizontal line underneath.

S POVEY
CHAIRMAN