

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0009/06/18

In the Matter of Premises at Florence House, Judkin Court, Century Wharf, Cardiff, South Wales

And In the matter of an Application under Landlord and Tenant Act 1985 – Section 20ZA

APPLICANT : Century Wharf(One) RTM Company Limited

RESPONDENTS: Mrs Lynne Hughes (No. 131) Judkin Court)
All other leaseholders of premises at Judkin Court.

Tribunal; Richard Payne, Legal Chair.
Roger Baynham, Surveyor.

Decision.

The tribunal grants the Applicant's application under section 20ZA of the Landlord and Tenant Act 1985 and dispenses with the requirement for the Applicant to comply, or to have complied, with the relevant consultation requirements under the Act and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 in relation to the material qualifying works, namely, the upgrade of the fire alarm system in Florence House, Judkin Court, Century Wharf, Cardiff. The tribunal is satisfied that it is reasonable to dispense with those consultation requirements on the facts of this case.

Background.

1. This case relates to the upgrade and replacement of a fire safety system within Florence House, Judkin Court, Cardiff.
2. By an application form dated 8th June 2018 and received by the tribunal on 18th June 2018, the Applicant sought dispensation from the consultation requirements for qualifying works under section 20 of the Landlord and Tenant Act 1985 ("the Act"). The works were described in the application as the replacement of the defective fire alarm system and that the works and the application were urgent due to safety considerations and the fire risks to residents some of whom were disabled. The form was completed by Mr Owein Matthey, Development Manager of Warwick Estates, the management company with responsibility for Judkin Court. Mr Matthey said that whilst no consultation had been carried out due to the urgent requirements to

rectify the safety concerns, the leaseholders had been contacted to advise them of the works and that dispensation was being sought.

3. Mr Matthey enclosed a letter and quotation for a proposed fire alarm upgrade for Florence House, (in the sum of £8490 plus vat which included a 10% trade discount) from Mr Stuart Bailey, Managing Director of Dragon Fire and Security Systems that was dated 5th June 2018. The letter described how the existing Siemens Synova fire alarm system in Florence House and other parts of Century Wharf was now obsolete, that the Synova fire protection system was phased out in 2008 and that spare parts for the system were no longer available. The letter also said;

“As I understand it, at Florence House, over many weeks, various different faults have been occurring on the fire alarm system, including the control panel processor “freezing”, requiring the panel to be rebooted, different input/output modules and detectors have also displayed “faults” or “missing” which may also mean the processor on the motherboard is failing, especially as the faults are so random;

- *Faults seem to occur after a weekly test which puts the control panel “under load” conditions as the sounders are also being activated for the test.*
- *When we arrive the faults are not present (apart from one fault, which looked like a head being loose/tampered with.)*
- *Rebooting the panel clears all faults.*

Taking a longer term approach, in my opinion, it would be better to upgrade the detection and control panel to the new Siemens Cerberus Pro. The cabling can stay the same which is a little bit of good news and the residents of Florence House would benefit from the latest “state of the art” technology smoke detection.”

4. Mr Bailey also indicated that he had originally looked into just swapping the control panel but he would not know when and if the Synova hybrid control panel could be ordered and delivered within a reasonable timescale and he said that *“for a life safety system would not be acceptable”* and that Florence House would be left with the old obsolete detection system which would not be a good investment. Mr Bailey also indicated that the quoted cost could be spread over two Century Wharf financial years to help with the service charge element.
5. The tribunal had been provided with the details of all leaseholders of Florence House and wrote to them on 18th June 2018 enclosing a copy of the application form and enclosures and informing them of their right to be joined as a respondent to the proceedings. The only person who responded and positively wished to be joined as a respondent was Lynne Hughes. The tribunal thereafter made a directions order on 6th July 2018 allowing for the provision of statements and evidence on both sides and inviting the respondent to make submissions on the applicant’s evidence, whether it would be reasonable for the tribunal to dispense with the consultation requirements and to provide details of any prejudice that may be suffered from the lessees if dispensation were to be granted.

6. Mr Matthey submitted a statement dated 31st July 2018 indicating that the fire alarm system was not functioning properly and that this was unacceptable in terms of the protection being offered to residents, that sections of the Health and Safety at Work Act 1974 had been breached as had the Regulatory Reform (Fire safety) Order 2005. Mr Matthey further said *“Dispensation is sought due to the urgent nature of the works which present health and safety breaches and concerns which could result in **death**. The Applicants and their agents primary concern is the safety of those residing /visiting the buildings [sic]”* and *“the works have now been completed due to the safety of those within the buildings. Dispensation was applied for in respect of speed to commence works as opposed to completing the section 20 standard consultation procedure which would take several months to complete and in the meantime put people’s lives at risk in the event an incident was to occur.”*
7. Mr Matthey further added that he did not believe that there was any prejudice suffered by the respondents or any other party and indicated that the Applicant was content to have the matter decided without an oral hearing.
8. Notwithstanding that the directions order allowed Mrs Hughes and any other leaseholder of the relevant premises to file a statement and submissions in response by 10th August 2018, no further document or communication was received from her or any other leaseholder. The directions order had indicated that if an oral hearing was required, the tribunal were to be notified by 4th August 2018. No such indication was received.

Inspection and determination.

9. The matter was listed for inspection and determination on the papers on 11th September 2018. At inspection the tribunal were accompanied and shown around by Mr Matthey but no evidence was taken.
10. Judkin Court comprises ten blocks of residential apartments located within the larger Century Wharf development which consists of a total of just under 1,000 residential apartments and houses within a gated community. It is within easy reach of the centre of Cardiff with all its amenities and also the attractive and vibrant Cardiff Bay area. Florence House is located within the Judkin Court sector of the entire development and was built 17 years ago, being conventionally constructed with brick exterior walls which have, in part, been cement rendered, and having a tiled roof. It comprises 19 apartments of varying size over four floors, together with relatively spacious communal hallways, and with lift access to the higher floors. In addition there is a substantial underground car park.
11. There is a mix of occupiers within Florence House and it was confirmed that a number of the residents have disabilities and live on the higher floors. The tribunal noted the fire alarm panel and the smoke detectors on each floor in the communal areas. The tribunal did not have access and did not inspect any of the individual flats in Florence House.

The Law.

12. The relevant primary legislation is to be found in sections 20 and 20ZA of the Act. Section 20ZA(1) to 20ZA(4) provides as follows:

20ZA(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

13. Section 20(1) provides that, where the section applies to any qualifying works the relevant contribution of tenants is limited (in practice to £250) in accordance with section 20, and the material accompanying regulations, unless the consultation requirements have either (a) been complied with in relation to the works or (b) dispensed with in relation to the works by a Leasehold Valuation Tribunal.
14. The elements to the consultation required are prescribed by the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (“the Regulations”) and the Act but in broad terms, notice would be given to the tenants of the works and proposed costs, responses sought from the tenants within 30 days, the landlord would have regard to any responses, obtain estimates including from contractors nominated by the tenants, send out a second notice with details of at least two estimates and a summary of observations made to the landlord together with details of a second 30 day period for further observations to which the landlord must have regard before entering into the contract. This is of necessity a time consuming process.
15. The leading case on the question of whether a Leasehold Valuation Tribunal should grant a section 20(1)(b) dispensation under section 20ZA of the Act is the Supreme Court decision in *Daejan Investments Ltd. v. Benson* [2013] 1 WLR 854. The Court said that the purpose of the consultation requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate and, as such, the issue on which the tribunal should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the consultation requirements (Lord Neuberger in the

leading judgment at paragraph 44). The dispensing jurisdiction is not a punitive or exemplary exercise. The consultation requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above (paragraph 46). The importance of real prejudice to the tenants flowing from the landlord's breach of the consultation requirements is the main, indeed normally the sole, question for the tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) (paragraph 50). The tribunal has power to grant a dispensation on such terms as it thinks fit provided that any such terms are appropriate in their nature and their effect (paragraph 54).

16. It is for the tenants to identify some relevant prejudice that they would or might have suffered (paragraph 67) and further that once the tenants have shown a credible case for prejudice it is for the landlord then to rebut it (paragraph 68). It is also for the tenants to identify what it is they would have said if the consultation process had been implemented.

Decision.

17. Therefore it is clear that the tribunal must consider the question of the extent, if any, to which the tenants were prejudiced by the failure of the landlord to comply with the applicable consultation requirements. As stated above, directions were given that specifically asked for submissions on this question but there was no response from any tenant/leaseholder and no indication before the tribunal that the tenants had been prejudiced in any way by the lack of consultation.
18. With regard to the lease, a specimen Land Registry official copy of which had been provided by the Applicant, the Tenth Schedule contained covenants on the part of the Manager, which are to carry out the works and do the acts and things set out in the Sixth Schedule. The Sixth Schedule, "Maintenance Costs", Part B, "Apartment Costs", clause 3 states;

"Inspecting maintaining renting renewing reinstating replacing and insuring the fire fighting appliances/systems, and such other equipment or systems relating to the Block by way of contract or otherwise as the Manager may from time to time consider necessary or desirable for the carrying out of the acts and things mentioned in this Schedule."

Therefore the lease authorises and indeed obliges the management company to undertake this work.

19. The tribunal only had evidence of the one quotation from Dragon Fire and Security Systems Limited as described above. The tribunal has carefully considered all of the evidence before it and taking into account the findings of the inspection, that Florence House comprises 19 apartments over four floors, it is clearly essential that there should be properly functioning fire alarm and smoke detection systems. The

evidence on behalf of the Applicant was that the previous system was failing and obsolete and that the health and safety of the residents of Florence House was at risk, with a clear risk of death in the event of a fire. The horrific fire at Grenfell Tower in June 2017 and the tragedy that befell its residents provided a dreadful reminder of the need for the highest standards of fire and safety equipment. The Applicant's evidence to the tribunal was that there were residents with disabilities within Florence House. Clearly such individuals would be at particular risk in the event of a fire particularly if the alarm and safety systems are not functioning properly.

20. The tribunal accepts the uncontradicted evidence of the Applicant and notes the advice of Dragon Fire and Security Limited as to the reasons why a new system was required rather than trying to repair and maintain the pre-existing system. The tribunal is satisfied that the works were urgent and that it is therefore appropriate to grant the application for dispensation from the consultation requirements.
21. There were no representations and no evidence before the tribunal that would allow us to conclude that the tenants of Florence House have been prejudiced by the urgent works to replace the fire alarm system and therefore there was nothing for the Applicant to rebut in that regard. There was no evidence to suggest that the work undertaken at Florence House was inappropriate, on the contrary, the tribunal is satisfied that the work was necessary in the circumstances.

DATED this 10th day of December 2018



Richard Payne
CHAIRMAN