

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

REFERENCE LVE/0032/08/16

In the matter of Maes Glanrafon, Brook Street, Mold, CH7 1RJ

In the matter of an Application under The Landlord and Tenant Act 1985 section 20ZA

APPLICANT – Clwyd Alyn Housing Association

RESPONDENTS – Mr David Dundon and Others.

TRIBUNAL – Andrew Grant (Chairman)
Colin Williams (Surveyor)
William Brereton (Lay Member)

DATE – 6th October 2016

DECISION

The Tribunal grants the Landlord's application under section 20ZA of The Landlord and Tenant Act 1985 ("The Act") and dispenses with the requirement for the Applicant to comply with the applicable consultation requirements under section 20 of The Act in relation to the specified works.

REASONS

INTRODUCTION

1. We were duly convened as a Leasehold Valuation Tribunal for the purposes of determining an Application by the Applicant, Clwyd Alyn Housing Association ("The Applicant").
2. By way of an application dated the 23rd August 2016 The Applicant sought an order pursuant to Section 20ZA of The Landlord and Tenant Act 1985 ("the Act") that dispensed with the requirements for the Applicant to comply with all or any of the Consultation requirements specified by Section 20 of the Act in relation to certain specified works.
3. The matter was dealt with on paper.
4. The Tribunal inspected the property on the 6th October 2016.

THE PROPERTY

5. The property is a detached three storey structure constructed of brick and block under a tiled roof.

6. Internally it is divided into 24 self contained flats (eight on each floor) with a central service area containing a staircase and lift serving all floors.
7. Externally there are communal gardens and communal parking accessed from Brook Street.

PROCEDURAL HISTORY

8. On the 23rd August 2016 the Applicant applied to the Tribunal seeking an order pursuant to section 20ZA of The Act which dispensed with the requirements for the Applicant to comply with all or any of the consultation requirements provided for by of S20 of the Act in relation to specified works which it proposed to undertake at the property. The specified works were set out in the report of Concept elevators which report was attached to the Application Form.
9. The Procedural Chairman issued directions on the 8th September 2016 ("The Order"). It was directed that the Applicant was required to file further evidence in support of the Application by 12 noon on the 20th September 2016. The Respondents were given the opportunity to file evidence in response by 12 noon on the 30th September 2016.
10. It was further directed that the matter would be determined without an oral hearing in accordance with regulation 13 of the Leasehold Valuation Tribunals (procedure) (Wales) Regulations 2004.
11. By paragraph 4 of the Order the Tribunal directed that either party may request that the matter be determined by way of an oral hearing. No such request was received and the matter was determined without a hearing.
12. The Applicant filed a witness statement prepared by Mr Robert Hopkins which was dated the 12th September 2016.
13. No evidence was filed on behalf of the Respondents.

THE APPLICATION

14. The Applicant is the Long Leasehold owner of the Property which consists of 24 Self Contained Apartments all of which have been given over for the use of retired or elderly persons.
15. All of the Residents occupy the property pursuant to the terms of sub leases which run for 99 years from the commencement date ("The Lease"). All of the sub leases are held on identical terms.
16. At Clause 3.2 (b) of the Lease the Respondents covenant to "pay the Service Charge in accordance with Clause 7" of the Lease.
17. At clause 5.3 (a) of the Lease the Landlord covenants, amongst other things that it "shall maintain and repair, redecorate and renew: -
 - (i) The Roof foundations and main structure of the building and all external parts thereof including all external and load bearing walls the windows and doors on the outside of the flats within the building (save the glass in any such doors and windows and the interior surfaces of walls) and all parts of the building which are not the responsibility of the leaseholder under this

lease or of any other leaseholder under a similar lease of other premises in the building

(ii) The pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and or upon the building.....”

(iii) The Common Parts.

18. On or about August 2016 the lift situated within the building developed a fault in that it failed to stop at the first floor of the property.

19. In line with its obligations under the lease the Applicant arranged for the lift to be inspected by a firm of engineers known as Concept Elevators. They prepared a report of their findings which is undated and which was attached to the application form. They recommended replacement of the control panel, car controls, floor selection equipment, all push buttons and stations, trailing flexes and wiring and the operating switches. They also advised the installation of landing indicators. (“The Specified Works”)

20. The quote for the cost of the work was £13,568.00 plus VAT.

21. The Applicant wrote to all tenants on the 23rd August 2016 explaining the problem with the lift and indicating that the Applicant proposed to fund the cost of the works from the sinking fund which existed. They also said that the works would take approximately 5 working days and that it had applied to the Leasehold Valuation Tribunal to dispense with the s20 Consultation requirements.

22. In support of the application the Applicant has submitted the witness statement of Mr Robert Hopkins.

23. The written statement confirms that on the 25th August 2016 he met with 8 of the residents to discuss the proposed works to the lift. He states that all present were in agreement with the proposed works and that they were happy to use Concept Elevators to carry out the work at the price quoted. It was also agreed that they would instruct a company called Mottram’s to oversee the works.

24. He subsequently visited two residents on the top floor of the building (numbers 20 and 23) to discuss the matter with them personally.

25. His evidence is to the effect that the works are urgently required due to the infirmity of several residents on the upper floors who rely upon the lift to leave their properties and that no prejudice would be suffered by the residents in consequence of the application.

26. At the Inspection on the 6th October 2016 the Tribunal met with an individual called Mr Dundon who is the resident of flat number 16. He is the chairman of the residents group which is an informal association that deals with issues relating to the property and the residents.

27. He confirmed that the Application was not opposed and that there had been no objections to the Application received from any of the Residents. In fact, he stressed the urgent need for the works to proceed as there were some elderly and infirm residents on the upper floors of the building that would find it difficult to leave their property if the lift were out of repair for any significant length of time.

The Law

28. In considering the Application, the Tribunal must have regard to the relevant law which is applicable to applications of this nature.
29. Section 20ZA (1) of the Act provides the Tribunal with the power upon an application being made to make a determination to dispense with all, or any of the consultation requirements in relation to any qualifying works.
30. A Tribunal has the power, if satisfied that it is reasonable, to dispense with the requirements relating to qualifying works which means work on a building or any other premises (s20ZA (2) of the Act).
31. Section 20 of the Act limits recovery via a service charge of the costs of qualifying works from each tenant to £250 in circumstances where consultation requirements have not been complied with unless dispensed with by way of an order pursuant to Section 20ZA.
32. The most recent guidance on these matters is found in the decision of the Supreme Court in *Daejan Investments Limited v Benson and Others* (2013 UKSC14). In that case the following guidance was given –
 - (i) Section 20ZA is part of a legislative scheme whose purpose is to ensure that tenants are not required to pay for unnecessary services or services which are provided to a defective standard;
 - (ii) To pay more than they should for necessary services which are provided to an acceptable standard;
 - (iii) A Tribunal considering an Application under Section 20ZA should consider the extent, if any, to which Tenants are prejudiced by the failure to comply with the consultation requirements;
 - (iv) A Tribunal has power to grant dispensation on such terms as it considers appropriate, as long as such terms are appropriate in their nature and effect.
33. The Statutory Consultation requirements are contained in the Service Charges Consultation Requirements (Wales) Regulations 2004. In this case the applicable requirements are contained in part II of schedule 4 to the regulations and require:
 - (i) A notice of intention to carry out qualifying works. Such notice is to include the reasons for considering, if necessary, the need for carrying out the proposed works, and an invitation to nominate a person from whom an estimate should be sought;
 - (ii) The Tenants should have 30 days in which to respond to the notice.
 - (iii) The Landlord is to have regard to any observations made;
 - (iv) The Landlord must then obtain estimates with an obligation to seek an estimate from any nominated person;
 - (v) The Landlord must supply the Tenants with a statement setting out in respect of at least two estimates, their estimated costs and a summary of

observations made and any estimate from a nominated person must also be included;

- (vi) The Landlord must make the Estimates available for inspection;
- (vii) The Landlord must invite observations from the Tenants on the estimates. The Tenants then have 30 days in which to respond and the Landlord must have regard to any observations made;
- (viii) Following the entering into a contract for qualifying works, the Landlord must within 21 days give written notice to each tenant setting out reasons for awarding the contract or specifying the place and hour at which a statement of the reasons may be inspected.

Conclusion

34. In the present case the Landlord has not complied with any of the above requirements.

35. The Tribunal has considered the evidence submitted by the Applicants. It also takes note of the fact that there have been no objections or evidence of prejudice received from the Respondents.

36. Given that most of the residents of the property are elderly or infirm the Tribunal is satisfied that it is important that the works to the lift proceed swiftly and find that there is no prejudice to the Tenants in granting the Landlords application.

37. Accordingly, the Tribunal considers that it is reasonable to grant the Application and dispenses with the requirement for the Landlord to comply with the consultation requirements of section 20 of the Act as regards the specified works set out in the report of Concept elevators.

Dated the 27th October 2016

A Grant

Andrew Grant
Chairman