

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0038/11/20

In the Matter of Premises at Aurora, Trawler Road, Swansea, SA1 1FY  
And In the matter of an Application under Landlord and Tenant Act 1985 – Section 20ZA

APPLICANT:

Aurora Swansea Marina (Management) RTM Company Ltd

RESPONDENTS: Leaseholders of Aurora

Dafydd Thomas – apartment 43

Gillian Boobier – apartment 37

Mr and Mrs Evans – apartment 33

TRIBUNAL:

Mr AR Phillips Chair

Mr Andrew Lewis Surveyor Member

Mrs Carole Thomas Lay Member

DECISION

**Dispensation is granted from the consultation requirements of s20 Landlord and Tenant Act 1985 in respect of works specified in the Applicant's application.**

**In granting the dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable.**

**The Applicant is to send a copy of this determination to each of the Lessees contributing to the service charge.**

BACKGROUND

1. The Applicant seeks dispensation under s.20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by s.20 of the Act.
2. The building, Aurora House, is a single detached apartment block and is part of a larger development of mixed use buildings. It is a twelve storey block with underground car parking.
3. The Applicant has explained that urgent fire safety works are required to the building following the service of an Enforcement Notice dated 28<sup>th</sup> October 2020 by the Mid and

West Wales Fire and Rescue Service and additional works identified in a subsequent letter from the Mid and West Wales Fire and Rescue Service ("Fire Service") dated 3<sup>rd</sup> November 2020.

4. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. The application does not concern whether any service charge costs are reasonable.
5. It has been agreed that the matter can be determined on the papers.
6. There was an initial hearing on 3<sup>rd</sup> February 2021 which was adjourned by the Tribunal for further information and clarification which has now been received by the Tribunal.

## THE LAW

7. The relevant section of the Act reads as follows:  
s.20ZA Consultation requirements:  
(1) Where an application is made to a Leasehold Valuation 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.  
The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson and others* [2013] 1WLR 854. This was a case where the Supreme Court were considering a retrospective application where works had already been carried out. The principles are however relevant to this decision. In summary the Supreme Court noted the following
  - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the noncompliance has in that sense caused prejudice to the tenant.

- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **SUBMISSIONS**

### **The Applicant's Case**

- 8. The initial bundle provided by the Applicant together with the supplementary information contained within the Applicant's subsequent letter dated 8<sup>th</sup> February 2021, following the adjourned hearing, sets out the works for which dispensation is sought as follows:  
"There are urgent works required to meet the Enforcement Notice imposed by the Fire Service, and to ensure residents safety.  
It is these works that we are seeking dispensation for, which include the installation of fire protection to riser cupboards and to fireproof corridors, the stairwell and landings. There are urgent works also required to fire doors throughout the building.  
The dispensation application is to include the long term agreement for the Insurance Premium (apologies this was a typing error on the application)"
- 9. The required works set out in the Enforcement Notice dated 29<sup>th</sup> October 2020 as amended by the subsequent letter from the Fire Service dated 3<sup>rd</sup> November 2020 are:
  - a) Compartmentation
  - b) Fire Resisting Doors
  - c) Fire Risk Assessment. Item numbers 2 – 7 contained in the letter dated 3<sup>rd</sup> November 2020 are works that do not appear to require s.20 Notices to be served under the provisions of the Act and in the Tribunal's opinion are part of the day to day responsibilities of a Managing Agent.
- 10. It is unclear from the information supplied by the Applicant as to whether the works specified in the letter dated 8<sup>th</sup> February "to ensure residents safety" are in addition to the works required by the Fire Service, or whether the phrase has no separate meaning.

## **DETERMINATION**

- 11. The Tribunal has been provided with a copy of a specimen lease dated 7<sup>th</sup> November 2008 ("the Lease") for a Flat in Aurora House.
- 12. At clause 3.4 of the Lease, the Lessee covenants to pay the Lessee's Proportion of the Maintenance Expenses payable by the Lessee, in accordance with the provisions of the Seventh Schedule which in turn details a number of different Lessee's Proportions for different areas of the building and development. The relevant provision is the Part B Proportion details of which are set out in the Sixth Schedule of the Lease

13. The Sixth Schedule of the Lease at Part “B” sets out the recoverable Building Costs as follows:
  1. Inspecting rebuilding repointing cleaning renewing redecorating or otherwise treating as necessary and keeping the internal common parts of the Building comprised in the Maintained Property and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof
  2. Inspecting maintaining renting renewing reinstating replacing and insuring the fire fighting appliances the video door entry system the communal TV aerial system the domestic cold water booster pumps the lift(s) and such other equipment relating to the internal common parts of the Building comprised within the Maintained Property by way of contract or otherwise as the Manager may from time to time consider reasonably necessary or desirable for the carrying out of the acts and things mentioned in this Schedule
  3. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part or parts of the internal common parts of the Building
  4. Insuring and keeping insured the Building and other structures at all times against the Insured Risks in the full reinstatement value PROVIDED ALWAYS  
(The Lease contains further clauses in the Sixth Schedule at clauses 4.1 – 6 which are not relevant to this decision.
14. In the light of the above the Tribunal is satisfied that the works for which dispensation is sought by the Applicant are qualifying works under the Act and in the case of the buildings insurance, a qualifying long term agreement under the Act.
15. Dispensation from the consultation requirements of s.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
16. The case of Daejan Investments Ltd v Benson and others [2013] 1WLR 854 referred to above provides guidance to the Tribunal when considering the issues raised by all parties.
17. The documentation before the Tribunal contains no evidence of any objection from any of the Lessees and there is no evidence of prejudice to the Lessees as referred to in the Daejan Investments case.
18. Given the costs to the Lessees of the increased insurance premium and the costs of the waking watch it is apparent that further delay in carrying out the works would be prejudicial to the Lessees.
19. For the above reasons, dispensation is granted from the consultation requirements of s.20 of the Act in respect of the following works as specified by the Fire Service in the Enforcement Notice dated 28th October 2020 and their subsequent letter dated 3rd November 2020:

- a) Compartmentation and works specified
- b) Fire Resisting Doors and works specified
- c) Fire Risk Assessment and works specified at Item number 1.

- 20. Further dispensation is granted from the consultation requirements of s.20 of the Act in respect of the long term agreement in relation to the Buildings Insurance.
- 21. As stated at paragraph 10 above it is unclear whether the works “to ensure residents safety” has a separate meaning and accordingly the Tribunal makes no decision in relation to this.
- 22. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 23. The Applicant is to send a copy of this determination to each of the Lessees who contribute to the service charge.

DATED this 22<sup>nd</sup> day of February 2021

AR Phillips

Tribunal Judge