

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0058/03/21

In the Matter of Premises at 1-22 Somerset Road, Monmouth, Monmouthshire, NP25 5AJ

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

Applicant: Monmouthshire Housing Association
Representation: Toby Wales and Daniel Hedges

Respondents: (1) Felicity Cotton (Flat 10)
(2) Jessica Hargaden (Flat 19)

Representation: Not present or represented

Type of Application: To dispense with the requirement to consult lessees concerning qualifying works.

Tribunal: Colin Green (Chairman)
John Singleton MRICS (Valuer Member)
Bill Brereton (Lay Member)

Date of determination: 27 May 2021

DECISION

- (1) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the tribunal grants dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (Wales) Regulations 2004 for the purpose of the proposed works described in paragraph 3 below, in their current or revised form.
- (2) For the avoidance of doubt, any subsequent flooring works are excluded from the dispensation.
- (3) In granting dispensation, the tribunal makes no determination as to whether any service charge costs are payable or reasonable.

REASONS FOR DECISION

Background

1. The residential development at 1 – 22 Somerset Road consists of three blocks of flats: 1 to 6 (three-storey), 7 to 10 (two-storey), and 11 to 22 (three-storey). The Applicant is the current freehold owner of the development, a successor to Monmouthshire County Council. For present purposes, the flats can be divided into two categories: those that are subject to long leases for a term of 125 years originally granted by the Council pursuant to the Right to Buy Provisions contained in the Housing Act 1985, being flats 1, 6, 9, 10, 19 and 20 (“the Long Leasehold Flats”), and the remaining sixteen flats which the Applicant lets on short-term tenancies.
2. There has recently been a drop in the water pressure to the flats in varying degrees, the worst affected being flat 10 of which Felicity Cotton, the First Respondent, is the current leaseholder and who has been unable to sub-let as a result. Investigative work carried out on the instructions of the Applicant has consisted of ground scanning, trial excavation pits, and internal investigations which have determined that the cause of the poor water flow and lack of pressure is the reduced internal diameter of the existing steel water mains feeding the flats. The reason for the reduction of the diameter of the internal pipe is that the pipework collects naturally occurring minerals on the inside of the pipe which builds up over time and hence reduces the amount of water that can flow through the pipe, a process commonly known as furring.

The Works

3. In consultation with Consilium SG, the Applicant has decided to replace the steel water mains feeding each flat with new MDPE (Blue water) pipework. It is currently drafting the specification and schedule of works for tender purposes, which are yet to be finalised. At this stage however, it envisages the works to include the following:
 - 3.1. Excavation of trenches to lay new MDPE pipework;
 - 3.2. Core drilling/excavation within the ground floor flats to feed in the new water main;
 - 3.3. Connection of the new water mains feeding each block by Welsh Water to the water mains in the road;
 - 3.4. Testing of new water main pipework;
 - 3.5. Connection of new pipework onto the existing copper pipework within the ground floor flat riser (area through all levels of the block which houses the water main and soil and vent pipes), which will subsequently feed the above flats;

3.6. Making good to ground floor kitchens where disturbed.

The Service Charge

4. As regards the relevant service charge provisions, the tribunal is only concerned with the leases of the Long Leasehold Flats since although the other tenants are liable for certain service charge expenditure, they will not be contributing to the costs of the above work. The position of the Applicant is that only the leaseholders of the Long Leasehold Flats will be making such a contribution by way of service charge.
5. In summary, the relevant provisions of those leases, which in all material respects are in the same terms, are as follows.
 - 5.1. In addition to the Property (as defined) the demise includes the right to the passage of water and the use and maintenance of the pipes and other installations for the passage of water (paragraph 1 of Schedule A). The landlord has the right to execute works upon any part of the Building (as defined) not demised, any part of the curtilage of the Building, or any land belonging to the landlord adjoining or near the Building as it thinks fit (paragraph 2 of Schedule B).
 - 5.2. The landlord's repairing covenants include keeping in repair the structure and exterior of the Property and the Building (including external pipes) and to keep in repair any other property over and in respect of which the tenant has been granted rights, which will include the right to the passage of water through pipes (clauses 6(1) and (2)). By clause 4(10) the tenant covenants to allow the landlord entry to the Property for the purpose of, amongst other things, making, repairing, and maintaining pipes, and keeping in order and good condition all pipes used for the Building or any part thereof, and also for the purpose of laying down maintaining repairing and testing water pipes, the landlord making good all damage occasioned thereby to the Property.
 - 5.3. Under clause 4(3) the tenant covenants to pay a proportion of the reasonable expenses and outgoings incurred by the landlord in the repair, maintenance, and renewal of the Building, and in respect of the other matters specified in Part 1 of Schedule C, such further sums ("the Service Charge") being subject to the terms and provisions of Part II of Schedule C. Paragraph 3 of Part 1 of that Schedule provides for the cost of maintaining, repairing, renewing, or amending any water pipes serving the Building and situate in under or upon the Building or any land used in connection therewith. Under paragraph 3 of Part II of Schedule C, in respect of any expenses or any outgoings which relate not only to the Building but other premises, the Service Charge shall mean such proportion of such expenses and outgoings as would in the circumstances be reasonable. The calculation of the Service Charge for

each flat is dealt with in paragraph 8 of Part II by reference to rateable values.

Consultation

6. Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 contain provisions that require a consultation process to be followed in respect of, amongst other things, “qualifying works”, that is, works in respect of which each tenant will have to contribute more than £250.00 by way of service charge. In a case such as the present the details concerning, and timetable for, the relevant consultation process in respect of such works is contained in Part 2 of Schedule 4 to the 2004 Regulations, which include a provision that after service on the initial notice of intention the landlord must obtain at least two quotes for the work, irrespective of whether the tenants have nominated contractors. Failure to observe the consultation requirements will limit each tenant’s liability to contribute to the cost of the qualifying works to the sum of £250.00, but under section 20ZA of the 1985 Act the tribunal is empowered to dispense with all or any of the consultation requirements.

The Application

7. The present application has been made by the landlord seeking dispensation under section 20ZA of the consultation requirements that apply to the works mentioned in paragraph 3 above. The application was made in March 2021 at a time before the investigative work had been completed and in anticipation of obtaining the specification for the work required to remedy matters, so that the dispensation could be obtained, and matters progressed, as quickly as possible.
8. For the purpose of determining the application, the tribunal will proceed on the basis, without deciding the issue that the above works fall within the scope of the service charge provisions of the Long Leasehold Flats and therefore that part of the cost of the works is recoverable by the Applicant from such tenants by way of service charge. The final cost of the works is not currently known but it is clear that on the above footing the individual contributions will in each case exceed £250.00 so that the consultation requirements would be engaged.
9. Of the leaseholders of the Long Leasehold Flats, only the two Respondents indicated to the tribunal that they wished to be joined as parties. Neither took the opportunity to provide a statement in response pursuant to paragraph 2 of the tribunal’s directions made on 26 March. The virtual hearing took place on 27 May by way of the CVP platform and was attended by Toby Wales, the Applicant’s service charge and leasehold officer, and Daniel Hedges, its asset manager. Although Jessica Hargaden, the Second Respondent, was in a position to connect for the hearing, in the absence of Felicity Cotton she decided not to do so.
10. The grounds of the application are that the works required to remedy the serious drop in water pressure across all flats are of an urgent nature. Under

the timetable provided by the Regulations the consultation process with the owners of the Long Leasehold Flats would take a minimum of about 60 days and quite likely a month or so longer. The Applicant wishes to expedite matters and intends to commence the tender process once the final revisions to the specification of works have been agreed with Consilium SG, with a tender submission period of about 30 days. It is expected that more than two contactors, approved by Welsh Water, will be approached and that once the successful contractor has been appointed the works can begin immediately.

11. Mr. Wales has made it clear that the costs of the investigative work and agreeing a specification for the works will be borne by the Applicant and not form part of any service charge. The subsequent flooring works will be subject to the statutory consultation process and no dispensation is sought in respect of those works.

Determination

12. The leading decision concerning dispensation is that of the Supreme Court in *Daejan Investments v. Benson* [2013] UKSC 14. According to the guidelines in that case concerning how to approach the issue of dispensation, in the first instance it is for the tenants to identify how they will be prejudiced by a failure to follow the consultation provisions and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate. As noted above however, there has been no response from either of the tenants who wished to be joined as parties to the proceedings and neither attended the hearing, so no case of prejudice has been raised. In addition, although strictly speaking the silence of the owners of the Long leasehold Flats does not amount to consent, the absence of dissent or any objection to the application is something to which the tribunal should give suitable weight, as well as the apparent urgency of the work and the inconvenience and financial loss that is being suffered as a result of the significant drop in water pressure. Regard was also had to the intention to obtain at least two quotes for the work, as provided for by the Regulations.

Conclusion

13. In the light of the above, the tribunal considers it appropriate to dispense with the consultation provisions in respect of the proposed works set out in paragraph 3 above, making it clear that the dispensation does not extend to any subsequent flooring works. In granting dispensation, and as mentioned in paragraph 8 above, the tribunal is making no determination as to whether any service charge costs are payable or reasonable.

Dated this 11th day of June 2021

Colin Green

Chairman