

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0046/01/22

In the matter of Premises at 8 Bodfor Terrace, Aberdyfi, Gwynedd, LL35 OEA (the Property)

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

Applicant: Mr George Tuthill

Respondents: Mandy Jordan and Geoff Bull (Flat 6)

TRIBUNAL AVS Scott Chair
Neil Martingale FRICS
William Brereton Lay member

ORDER AND REASONS FOR THE DECISION OF TRIBUNAL

ORDER

The Tribunal determined that it was reasonable to dispense with the consultation requirements of sections 20 and 20ZA of the Landlord and Tenant Act 1985 (the Act) and allow the Applicant to proceed with the works to the Property set out in the Applicant's statement dated 9 February 2022. The Tribunal made no determination as to the reasonableness of the costs of such works.

BACKGROUND

1. The Applicant applied to the Leasehold Valuation Tribunal (Wales) on 13 January 2022 for dispensation with consultation requirements under section 20ZA of the Act in respect of qualifying works. He said that the building was used by holidaymakers and he would like the works to be started in mid-February 2022 so that it could be completed before the Easter holidays. He said that he had consulted all but one of the leaseholders and discussed the extent of the proposed works. They had made suggestions and he had visited one of the contractors they had proposed and discussed the options with the local Building Control Officer. Until recently, he had been unable to provide the leaseholders with any detailed figures because of the difficulty of findings tradespeople prepared to do the work.

2. The work involved repairing the external render on quite a large building. It was impossible for contractors to quote for the repair as they could not know the extent of the repairs required until the scaffolding had been erected and they could inspect the condition of the rendering. The work had to be done on the basis of time and materials. He had contacted four rendering contractors in the area and only one was prepared to do the work. The others declined or did not respond. Many of the tradesmen in the area were very busy and some did not respond to phone calls or emails.
3. The Applicant had written to the leaseholders of flat 6 (the Respondents) to notify them that he proposed to carry out repair and maintenance work on the Property, to repair the external render of the building and that he intended to apply to the Tribunal to dispense with the formal consultation requirements of the Act. The budgeted cost of the works was £40,000 (including VAT). He attached a schedule setting out the estimated costs for each item of repair and the individual leaseholders estimated share of the costs. He attached quotations from Roofmasters and KPE Plasterers.
4. A Procedural Chairman made directions on 27 January 2022. The Applicant was to file a statement as to the costs of the qualifying works involved, any further representations as to why it was reasonable to dispense with the consultation requirements of sections 20 and 20ZA of the Act, whether there was any prejudice to the Respondents if the application was granted, and any further submissions in support of the application. The Respondents were to file a statement in response by 18 February 2022. All parties were directed to advise the Tribunal whether an oral hearing was required or whether they were happy for the matter to be determined on the papers.
5. On 9 February 2022, the Applicant wrote to the Tribunal to comply with the Procedural Directions, and set out details of the qualifying work, including scaffolding to allow access to allow repairs to the roof, external repairs to three of the walls and to the roof over flat 3 and the window to the rear of Flat 5 (top floor), to remove the disused letter box, refurbish the front door, repaint and recarpet the internal stairwell, repair the intercom system and repair the gutters and rainwater pipes. The Applicant repeated the reasons given in his application for applying for dispensation from the consultation requirements in the Act (ie that the extent of the work needed was difficult to estimate and there was a shortage of tradespeople in the area willing to undertake the work).
6. On 16 March 2022, the Applicant emailed a further quotation from Byrne Scaffolding Limited, with further copies of the quotations and including a quotation for the replacement of the carpets in the stairwell.

THE LAW

7. Section 20 of the Act requires that where the section applies to any qualifying works or qualifying long term agreements, the relevant contributions of tenants are limited to £250 per tenant unless the consultation requirements are either complied with or dispensed with by the appropriate tribunal.
8. Section 20ZA of the Act provides that where an application is made to an 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 do so.

THE PROPERTY

9. The Property comprises a café on the ground floor on a long-term lease and flats 1 to 6. Flats 2 and 4 are owned by the Applicant. The other flats are let on similar long-term leases (the Tribunal had been provided with a copy of the lease for flat 1, which was for a term of 99 years from April 2000, and for the shop, which was for a term of 125 years from March 2002). The Café leaseholder is responsible for the repair of the foundations of the building and frontage and sidewall of the café up to the first-floor level. The leaseholders of the flats are responsible for the rest of the structure of the building and the stairwell.

THE INSPECTION

10. The tribunal's surveyor attended and inspected the property alone owing to the Covid 19 restrictions, on the morning of 16 March 2022. There was no attendance on or behalf of the Respondents. The Applicant was present.
11. The Applicant, in complying with the Tribunal's Directions, did not indicate that a hearing was required. None of the other leaseholders responded to the procedural chairman's directions, only the leaseholders of flat 6 responding to a request from the Residential Property Tribunal sent on 18 January 2022 to state whether they wished to be made a Respondent to the proceedings. The Tribunal was satisfied that it could determine the application on the papers and no application for an oral hearing was received before the determination of the Tribunal by the Tribunal's cloud video platform on 17 March 2022.

THE COMMITTEE'S DECISION

12. The Tribunal found that given the amount of the estimated costs, the proposed works were subject to the requirements of section 20ZA of the Act and thus required consultation with the leaseholders unless dispensation was given.
13. 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, in approaching 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.
14. As noted above however, there have been no submissions from the leaseholders who wished to be joined as parties to the proceedings (Flat 6) who did not request a hearing. Other leaseholders did not respond to the request to state whether they wished to be joined as a Respondent. The Applicant has asserted that no prejudice will be caused by the lack of consultation. The Tribunal accepted this. The works proposed by the Applicant appeared to the Tribunal to be well thought out and reasonable, given the condition of the Property. The Tribunal also accepted that there was, given the pandemic situation, a real shortage of available tradesman to carry out such buildings works within a reasonable timescale.

15. The leaseholders had been informed of the Applicant's intention to seek dispensation, and of the extent and potential cost of the work involved. If, subsequently, the leaseholders took issue with the costs, application could be made to the Tribunal for a determination as to their reasonableness and/or payability pursuant to section 19 of the Act. The Tribunal therefore allowed the application.

Dated this 11th day of April 2022

Tribunal chair.