

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0051/02/22

In the matter of Premises at Pugh Buildings, Cowell Street, Llanelli, SA15 1AP

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

APPLICANT: Dragon Estate Management

Leaseholders: Ms Suzy Roffey Flat 1
Mr Neil Hodgson Flat 2
Mr Davie Price Flat 3
Mr J Jones/Mr B Cornelius Flat 4
Mr B Cornelius Flats 5, 6, 29 and 30
Mr Mark Andrews Flats 7 and 22
Mr Christian Evans Flats 8 and 11
Mr Alan Davies Flat 9
Mr Jeff Davies Flat 10
BAM Apartments Ltd Flats 12 and 19
Mr I James and Mrs D Fox James Flats 13 and 14
Mr Fergus Lee Flat 15
Mr Martin Evans Flat 16
Mr David Uzzell Flat 17
Mr Mark Davies Flats 18 and 26
Mr Jonathan Evans Flats 20 and 24
Ms Jemma Pugsley Flat 21
Mr David Stephens Flat 23
Mr F Walsh and Mr R Stephens Flat 25
DG Developments Ltd Flat 27
Mrs Lesley James Flat 28

Tribunal: Mr. M Hunt (Chairman)
Mrs. A. Harrison (Valuer)
Mr B. Brereton (Member)

Date of decision: 21 June 2022

DECISION

Dispensation from consultation is granted in respect of the roof repair works specified in the application, save in respect of the requirements laid down in paragraph 6 of Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004/684, subject to the following modifications: (1) that any notice required to be given under that paragraph must be made within 21 days of the date of this decision; and (2) that any statement of reasons required should include reference to, and append copies of, all of the quotes received by the Applicant in relation to the works.

For the reasons given below, the Leasehold Valuation Tribunal finds that it is reasonable to dispense with all but one of the consultation requirements in respect of the roof repairs undertaken on Pugh Buildings in early February 2022. This was the sole issue for the Tribunal to determine. It makes no findings as to any other issues, including the reasonableness of the repair scheme and contractor chosen, or of the cost of the works.

REASONS FOR DECISION

The Facts

1. The Applicant manages the premises at Pugh Building, Cowell Street, Llanelli, SA15 1AP (the “Appeal Property”) on behalf of the landlord, Graymile Properties Ltd. It contains a number of leasehold flats. The Applicant provided the Tribunal with a copy of a lease relating to Flat 21 dated 26 April 2006. Under that lease, the landlord is responsible for the upkeep and repair of the Appeal Property, including the roof.
2. Due to water ingress, said to have been rapidly deteriorating over the period December 2021 - January 2022, the Applicant arranged for urgent repairs to the roof (the “Works”). Prior to undertaking the Works, it was incumbent on the landlord to consult with leaseholders in accordance with the Service Charges (Consultation Requirements) (Wales) Regulations 2004/684 (the “Regulations”). No valid consultation took place. Through a combination of s.20 of the Landlord and Tenant Act 1985 and Regulation 6, the result of this failure to consult is that no leaseholder can be charged more than £250 in relation to the Works unless this Tribunal grants a dispensation from the consultation requirements.
3. Whether to grant that dispensation is the only issue before this Tribunal.
4. On 16 March 2022, this Tribunal made directions for the preparation of the case and the submission of arguments and evidence. A copy of the Order was sent to the Applicant and all of the leaseholders. The Applicant filed a witness statement provided by Victoria Lewis dated 29 Mar 2022. None of the leaseholders made any submissions or filed evidence.
5. The application was determined on the papers, without a hearing.

The Law

6. S.20ZA of the Landlord and Tenant Act 1985 provides as follows (relevant excerpt).

20ZA Consultation requirements: supplementary

(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...

7. Regulation 7 of the Regulations provides as follows (relevant excerpt).

7. The consultation requirements: qualifying works

...

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works—

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

8. Paragraph 6 of Part 2 of Schedule 4 provides as follows (relevant excerpt).

Duty on entering into contract

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, the landlord shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) ...

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate. Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

9. The Supreme Court addressed the considerations that a Leasehold Valuation Tribunal should take into account in exercising its discretion to dispense with the consultation requirements: *Daejan Investments Limited v Benson and Others* [2013] UKSC 14. In very brief summary, the Supreme Court decided that the Tribunal should focus on the prejudice that the leaseholders might have suffered

due to the landlord's failure to consult, notably in two respects: whether the works chosen were appropriate, or whether they cost more than would be appropriate (see paragraph 44 of the judgment).

10. Furthermore, the Supreme Court found that the scope of the Tribunal's powers to apply terms to any dispensation is broad, provided of course that any terms imposed are appropriate (see paragraphs 54-55 of the judgment).

The Determination

11. The submissions and evidence provided by the Applicant make clear that the Works undertaken were urgent because the water ingress was causing damp and was interfering with electrical connections. No party has suggested otherwise. The Tribunal has no reason to doubt the urgency of the Works.
12. The Applicant submits that due to this urgency it had been prevented from following the requisite consultation with leaseholders prior to starting the Works. However, it sought three quotes to inform its decision on who to appoint to conduct the repairs. The Tribunal has not been clearly informed as to the contractor, agreement date or price breakdown of the Works, however it appears that the Applicant chose not to pursue the cheapest quote, preferring another due to specialist experience and warranty. The reasonableness of this choice is not a question for this Tribunal.
13. The Applicant has not provided any information as to what, if any, limited consultation was attempted or undertaken with the leaseholders in the time available, or whether any of the requirements laid down in the Regulations have been met in part or in full. However, the Applicant submits that all due care was taken to avoid the leaseholders suffering any disadvantage, and that they have not suffered any prejudice.
14. The leaseholders have not alleged any prejudice. However, the question for this Tribunal is whether it is reasonable to dispense with the consultation requirements. The applicable requirements in this case are laid down in Part 2 of Schedule 4 of the Regulations (the "Schedule"), referred to in Regulation 7(4)(b). The Tribunal readily accepts that certain of the requirements could not reasonably be followed in this case due to the urgent nature of the Works, including allowing for a 30-day period for observations or nominations of people from whom quotes should be obtained. In respect of these and other requirements, although some form of limited consultation may have been possible, no obvious prejudice has been suffered by the failure to consult. It would therefore be reasonable to dispense with those requirements.
15. However, in the Tribunal's view, there is no justification for dispensing with all of the consultation requirements. Notably, there appears to be no good reason for failing to comply with paragraph 6 of the Schedule, which requires a landlord to notify leaseholders in writing of a contract that has been entered into, and to provide reasons for that decision (assuming the quote accepted was not the lowest, which appears applicable to the present facts). Bearing in mind that decisions as to contracts entered into may be relevant to any challenge to, or assessment of, the reasonableness of any service charge, this information could be of some importance to the leaseholders. It is not for this Tribunal to determine any of these issues, but equally it is not for this Tribunal to dispense with consultation requirements without good reason.
16. Accordingly, this Leasehold Valuation Tribunal dispenses with all of the consultation requirements save that laid down in paragraph 6 of the Schedule, amended only to the following extent: (1) that any notice required to be given must be made within 21 days of the date of this decision; and (2) that any statement of reasons required should include reference to, and append copies of, the other

quotes received by the Applicant for the Works (which would have been required to have been made available under paragraph 4(5)(c) of the Schedule). Accordingly, to the extent that this has not already been done, if the quote accepted was not the cheapest received, the Applicant must notify each leaseholder, and the recognised tenants' association, of the contract entered into and either give reasons for that, or make a statement of those reasons available to the leaseholders.

Dated this 21st day of June 2022

M Hunt

Chairman