

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL

Reference: LVT/0001/04/22

In the Matter of The Aspect, 140 Queen Street, Cardiff, CF10 2GP.

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

APPLICANT: First Port Property Services Ltd

RESPONDENTS: The Long Leaseholders

TRIBUNAL: Trefor Lloyd (Legal Chairman)
Roger Baynham FRICS (Surveyor Member)
Carole Calvin Thomas (Lay Member)

DATE:

DECISION

The Tribunal having already issued a decision absent reasons to indicate that dispensation was retrospectively granted this judgment deals with the reasons behind that decision. We felt that it was important for the decision to be communicated as soon as possible as there was to be a further hearing in relation to substantive issues.

Accordingly, the Tribunal grants the Applicant's Application under Section 20ZA of the Landlord and Tenant's 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.

Background.

1. By way of an Application dated the 14th April 2022 the Applicant sought an Order pursuant to Section 20ZA of the Act to dispense with the requirements for the Applicants to comply with all or any of the consultation requirements specified by Section 20 of the Act in relation to retrospective dispensation in relation to the installation of a fire alarm to the property.

2. No comments were received from any of the Long Leaseholders and the Applicant agreed to the matter being dealt with on the papers. Given the nature of the Application there was no inspection of the property. The property comprises of one block containing residential apartments from the 1st floor level upwards with commercial premises on the ground floor. The block is a 15-storey building with a single protected central staircase that provides access to all floors with two firefighting lifts. The commercial units on the ground floor do not share any communal areas with the residential parts of the building. There are 99 residential premises which are all subject to long leases based upon similar terms.

Procedural History.

3. On the 14th April 2022 the Applicant applied to the Tribunal seeking an Order pursuant to Section 20ZA of the Act to retrospectively dispense with the requirements for the Applicant to comply to all or any of the consultation requirements provided by Section 20 of the Act in relation to the installation of a fire alarm. By way of Directions dated the 1st June 2022 the Applicant having sent a comprehensive statement with the Application was given the opportunity to file and serve a further statement if so advised. That statement to be filed by 4pm on the 10th June 2022. Similarly, the then Respondents to the matter at that stage, Mr A Lazarou, Flat 111 and Mr and Mrs Jones, Flat 133 were given the opportunity if they so wished to file a statement in response by 4pm on Friday 17th June 2022.
4. In addition ,the parties were required by 4pm on Monday 6th June 2022 to advise this Tribunal as to whether or not an Oral Hearing was required. No such request was made by either party. The Applicant filed a Witness Statement prepared by Mr Philip Parkinson dated 14th April 2022.
5. No evidence was filed on behalf of any of the Long Leaseholders/the Respondents named in the Directions Order as referred to above.
6. The Applicant is the named Management Company within the residential leases relating to The Aspect, 140 Queen Street, Cardiff. Proxima GR Properties Ltd is the Landlord for the premises pursuant to Title Number: CYM167881. The residential premises are let upon long leases commencing on the 13th and 14th December 2001 for a 999 year term. The service charge under the lease is defined as the lessee's proportion and this is set out as meaning "the proportion of the maintenance expenses payable by the lessee in accordance with the provisions of the 6th and 7th Schedule of the respective leases providing that the Lessees proportion is paid by way of further or additional rent".
7. An External Wall Fire Review by Tri-Fire dated the 28th June 2021 and the Combined Façade and Fire Safety Report by Façade Remedial Consultants dated 1st July 2021 were commissioned. Of relevance to this specific Application is the fact that the FRC Report also recommended various interim measures including upgrading the fire alarm and the undertaking of a Waking Watch.

8. In conjunction with this it was decided that a temporary fire alarm system specification should be produced internally, designed to BS5839-1-2017 to include:
 - i. Heat detectors in every room in each flat that has a window that overlooks an area of the external wall system.
 - ii. Heat detectors in other rooms, such as plant rooms;
 - iii. Sound pressure from fire alarm signal to achieve at least eighty-five dB at the open doorway to each bedroom in every flat and;
 - iv. Immediate evacuation signal to be triggered by the activation of any single heat detector with wireless systems to be used.
9. The Applicant based upon this specification obtained 3 tender submissions;
 - i. Ramtech Electronic Ltd - £78,937;
 - ii. Fire Protections Systems Ltd - £76,128;
 - iii. Gemini AMPM Ltd - £98,185.
10. The Applicant then undertook a Tender Analysis Report in April 2021 and following that Report the adjudicated figures were;
 - i. Ramtech - £77,937 plus VAT;
 - ii. Fire Protection Systems Ltd - £76,128 plus VAT and;
 - iii. Gemini - £98,185 plus VAT.
11. The Tender Analysis Report recommended Fire Protections Systems be awarded the contract as they represented the best value for money and had the earliest lead-in time on-site.
12. Work commenced on the 14th March 2022 and is now complete, being funded by the Applicant by way of an interest free corporate loan.
13. The Applicant informed the leaseholders of the works necessary to be carried out as follows:
 - i. The 2021/2022 service charge dated 9th September 2021;
 - ii. A letter to the lessees informing all residents of an arranged Zoom meeting to answer any questions about the Service Charge demand sent on the 11th October 2021.

- iii. The meeting took place on the 18th October 2021.
 - iv. Further documents were produced thereafter to answer some of the then Respondents' queries, and a further letter was sent on the 18th November 2021 confirming that the Applicant was seeking dispensation under the Act.
 - v. Only one observation was received which was later retracted after further details provided.
 - vi. Lessees were also provided with a letter dated 10th March 2022 confirming that contractors were due to be on-site by the 14th March 2022.
14. It is clear from the evidence that there were no objections from any of the Leaseholders/residents to the proposed works.

The Law

15. The relevant primary legislation is to be found in sections 20 and 20ZA of the Act. Section 20ZA(1) to 20ZA(4) provides as follows:
16. Section 20(1) provides that, where the section applies to any qualifying works the relevant contribution of tenants is limited (in practice to £250) in accordance with section 20, and the material accompanying regulations, unless the consultation requirements have either (a) been complied with in relation to the works or (b) dispensed with in relation to the works by a Leasehold Valuation Tribunal.
- 20ZA (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, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long-term agreement -

- (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.

- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

- 17. The elements to the consultation required are prescribed by the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (“the Regulations”) and the Act, but in broad terms notice would be given to the tenants of the works and proposed costs, responses sought from the tenants within 30 days, the landlord would have regard to any responses, obtain estimates including from contractors nominated by the tenants, send out a second notice with details of at least two estimates and a summary of observations made to the landlord together with details of a second 30 day period for further observations to which the landlord must have regard before entering into the contract. This is of necessity a time consuming process.

- 18. The leading case on the question of whether a Leasehold Valuation Tribunal should grant a section 20(1)(b) dispensation under section 20ZA of the Act is the Supreme Court decision in **Daejan Investments Ltd. v. Benson [2013] 1 WLR 854**. The Court said that the purpose of the consultation requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate and, as such, the issue on which the tribunal should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the consultation requirements (Lord Neuberger in the leading judgment at paragraph 44). The dispensing jurisdiction is not a punitive or exemplary exercise. The consultation requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above (paragraph 46). The importance of real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements is the main, indeed normally the sole, question for the tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) (paragraph 50). The tribunal has power to grant a dispensation on such terms as it thinks fit provided that any such terms are appropriate in their nature and their effect (paragraph 54).

- 19. It is for the tenants to identify some relevant prejudice that they would or might have suffered (paragraph 67) and further that once the tenants have shown a credible case for prejudice it is for the landlord then to rebut it (paragraph 68). It is also for the tenants to identify what it is they would have said if the consultation process had been implemented.

Decision

20. The Tribunal must consider the question of the extent if any to which the leaseholders are prejudiced by the failure of the landlord to comply with the applicable consultation requirements. We have evidence that all the leaseholders were informed of the works and invited to comment. All save but one did not object and that one objection was later retracted.
21. The leases as referred to in paragraph 6 above provide for payment for works of this nature. The simple fact there have been no representation from any of the leaseholders enables the Tribunal to accept the uncontradicted evidence of the Applicant which includes all consultation (despite the same not complying with the provisions of the Act).
22. We are mindful of the urgency of the works and the nature of the same being potentially life-saving and also the savings in terms of the cost of the Waking Watch.
23. All of these factors placed the Applicant in an invidious position. That is, if implementation of the fire alarm upgrade was delayed there would potentially be a danger to the leaseholders and also additional cost of the Waking Watch which was being incurred at a weekly rate.
24. For all these reasons we are satisfied that there is no prejudice to the leaseholders as a result of dispensing retrospectively with the requirements for consultation in these circumstances.

Dated this 5th day of September 2022

Trefor Lloyd
Chairman