

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0008/06/23

In the Matter of Premises at 1-19 Pipkin Close, Pontprennau, Cardiff, CF23 8FD

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

Applicant: Gala Due Limited
Representative: Western Permanent Property Limited

Respondents: Leaseholder Tenants
1-9 Pipkin Close, Pontprennau, Cardiff, CF23 8FD
Representative: N/A

Tribunal: Tribunal Judge R Price
Tribunal Member A Lewis FRICS
Tribunal Member J Playfair

DECISION

Compliance with the consultation requirements of section 20 of the *Landlord and Tenant Act 1985* is dispensed with in relation to works comprising and ancillary to the installation of a new 110mm UPVC drainage line from the internal soil stack (under Flat 8); to the external inspection chamber.

REASONS

Background

1. An application dated 5 June 2023 was made to the Residential Property Tribunal (“the Tribunal”) under section 20ZA of the *Landlord and Tenant Act 1985* (“the Act”) for dispensation from compliance with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in *The Service Charges (Consultation Requirements) (Wales) Regulations 2004* (“the Regulations”).
2. The application relates to 1-19 Pipkin Close Pontprennau Cardiff CF23 8FD (“the Property”) and was made by Mr D Britton, managing agent of Western Permanent

Property Ltd. The freeholder is Gala Due Limited. (“the Applicant”). This was clarified by reviewing the office copy entry on the Land Registry.

3. The Respondents to the application are the leaseholders of the residential flats within the Property.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concerned urgent remedial works to the drainage line from the internal soil stack to the external inspection chamber. These works are specified in an invoice by City Drains dated 13 April 2023 [11] which states, “To rectify the problem, a new 110mm UPVC drainage line would need to be installed from internal soil stack to the external inspection chamber.”
6. On 30 June 2023 the Tribunal issued directions. It recorded that none of the tenants have applied to be joined as Respondents after being invited by the Tribunal to do so by email/letter correspondence dated 13 June 2023. It informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties to determine the application.
7. No submissions were received from the Respondents.
8. The Tribunal’s surveyor informed the panel that an inspection was not necessary, as the works were to an underground pipe which couldn’t be inspected, other than with specialist camera equipment. The Tribunal met remotely at 10:30am on 15 September 2023 to consider the evidence before it.

Grounds for the application

9. The Applicant seeks dispensation from the consultation requirements and submits in a witness statement dated 12 July 2023 made by Daniel Britton of Western Permanent Property Ltd that: -

“Flat 8 has been suffering with reoccurring soil pipe blockages which has caused waste water to back up through the toilet and into the property causing the flat to become uninhabitable and have cause considerable damage. WPP arranged for CCTV footage to be carried out within the soil pipe to identify the cause of these reoccurring blockages. The footage identified that the soil pipe was sagging causing water to stagnate within the waste pipe. It is because of the reoccurring blockages we felt the need to apply for dispensation to avoid any blockages during the Section 20 consultation period. In order to rectify this issue, the 110mm soil pipe which is located approximately 1 metre into the ground and stretched the full length of the block (approximately 9metres) was exposed and the pipe re bedded in order for the water to drain correctly. The kitchen, hallway and bathroom flooring within Flat 8 was lifted and the solid concrete floor was excavated to access the soil pipe. Once

the works were completed to screed level the internal finishes within flat 8 was reinstated”.

Law

10. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

11. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–

- (a) complied with in relation to the works ... or*
- (b) dispensed with in relation to the works ... by the appropriate tribunal.*

12. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3)) of the Act.

13. Section 20ZA(1) of the Act provides:

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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;

- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Decision and Conclusions

15. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those consultation requirements provide for a degree of transparency and accountability when a landlord decides to undertake qualifying works. The requirements ensure that leaseholders have the opportunity to know about, and to comment on, plans to carry out major works, usually before those decisions are taken. This is due to the likelihood that the costs of the works will fall to be recovered from the leaseholders as maintenance costs. The consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
16. Therefore, in order to dispense with the consultation requirements, the Tribunal needs to be provided with a good reason why the works cannot be delayed until the requirements have been complied with. It is for the Tribunal to weigh the need for swift remedial action to protect the health and safety of the leaseholders occupying the flat concerned, the risk to further damage to the flat and the legitimate interests of the leaseholders in being properly consulted. The balance is likely to be in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholder's consent to the grant of a dispensation.
17. In this case, given the urgent need to install a new drainage line, as foul water was backing up through the toilet system in Flat 8 (posing a serious health risk) combined with a lack of any objection from the residents, the balance is in favour of the Applicant.
18. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements. However, none of the parties should take this as an indication that the Tribunal views the amount of the anticipated service charges resulting from the works likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard.

Dated this 22nd day of September 2023

R. Price
Tribunal Judge