

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0049/03/23

In the Matter of Premises at Grosvenor Court, Vaughan Street, Llandudno, LL30 1AW

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

**APPLICANT:** Vaughan Street Management Limited

**RESPONDENTS:** Leaseholder Tenants  
1-10 Grosvenor Court, Vaughan Street, Llandudno LL30 1AW

**TRIBUNAL:** Mr AR Phillips, Judge  
Mr N Martindale, Surveyor

**DECISION**

Dispensation is granted from the consultation requirements of s20 Landlord and Tenant Act 1985 in respect of works specified in the Applicant's application.

In granting the dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable.

The Applicant is to send a copy of this determination to each of the Lessees contributing to the service charge.

**BACKGROUND**

1. The Applicant seeks dispensation under s.20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by s.20 of the Act.
2. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. The application does not concern whether any service charge costs are reasonable.
3. It has been agreed that the matter can be determined on the papers.
4. The Tribunal convened on 14/07/2023 and having considered matter issued a further Directions Order.

5. Following the issuing of the further Directions Order the Tribunal has received an additional statement dated 29/08/2023 from Philip Anthony the secretary of Vaughan Street Management Limited.

## **THE LAW**

6. The relevant section of the Act reads as follows:

s.20ZA Consultation requirements:

(1) Where an application is made to a Leasehold Valuation 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.

The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson and others [2013] 1WLR 854. This was a case where the Supreme Court were considering a retrospective application where works had already been carried out. The principles are however relevant to this decision. In summary the Supreme Court noted the following:

- a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the noncompliance has in that sense caused prejudice to the tenant.

- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **SUBMISSIONS**

#### **The Applicant's Case**

- 7. The Applicant has provided statements from Philip Anthony dated 12/04/2023 and 14/07/2023 and David Edward Hulse dated 13/04/2023:
  - a) The statement of Mr Anthony confirms that:
  - b) Grosvenor Court is a building containing 10 flats.
  - c) Internal refurbishment works had been arranged at Flat 6, Grosvenor Court.
  - d) Following the removal of the ceiling wallpaper in the right-hand room, the window bay ceiling collapsed revealing major issues with the bay timbers and roof. A check on the left-hand bay revealed similar issues.
  - e) A report was commissioned to be carried out by Daltry Surveyors to assess the problem.
  - f) Details of their report are set out in Mr Anthony's statement, and it is not necessary for the purposes of this decision to repeat them in full here.
  - g) In summary, the report concluded that the bays were in danger of collapsing with the potential for major damage to be caused to the building and a risk of injury to passers-by and to the occupiers of Grosvenor Court.

#### **The Respondent's Case**

- 8. No response to the application has been received from the Lessees and none have asked to become a Respondent.
- 9. No statement has been filed with the Tribunal by the Lessees either objecting to or supporting the works.

### **DETERMINATION**

- 10. The Tribunal has been provided with a copy of a specimen of an underlease dated 21/08/198777 ("the Lease") for Flat 10 Grosvenor Court.

11. The Tribunal has been provided with copies from the Land Registry of other leases for the Flats at Grosvenor Court, some of which appear to be incomplete and possibly defective in relation to the service charge provisions.
12. The Tribunal has not been asked to and makes no determination as to the validity of the service charge provisions of the other leases for Grosvenor Court.
13. Mr Anthony has indicated that it is intended to remedy any defects in the leases with suitable deeds of variation in the future.
14. The Lessees do not appear to be disputing the requirement to pay the service charge and the Lessees are not objecting to the Application and in the circumstances the Tribunal is satisfied that it is appropriate to determine the Application before it.
15. In clause 4(iii) of the Lease the Lessor covenants to “maintain the external (sic) walls of the Flat Block (including therein the outer walls of the flats) the main girders timbers foundations staircases landings and roof of the Flat Block the access ways used in common and the pipes and wires and the water drainage gas and electricity services serving any portion of the Flat Block (other than the pipes wires and services serving the demised premises alone) therein in good and substantial repair and condition except as regards damage caused by or resulting from any act or default of the Lessee or the tenant or occupier of the demised premises making all necessary renewals and replacements as may be required thereto”.
16. The Flat Block is defined on page 1 of the Lease as Grosvenor Court Vaughan Street Llandudno in the county of Gwynedd for a leasehold estate on the terms set forth in the deeds mentioned in the First Schedule hereto such Deeds being hereinafter referred to as “the Head Leasehold Deeds” and such property consists of ten flats known as numbers 1 to 10 Grosvenor Court aforesaid”.
17. Clause 1 of the Lease sets contains a covenant by the Lessee to pay the rent, one tenth of the costs of the insurance of the Flat Block and  

“(c) also paying to the Lessor from time to time such sum (hereinafter called the maintenance charge”) as shall be determined to be the maintenance charge under the provisions hereinafter contained such last mentioned sum to be paid (subject to the provisions hereinafter contained) without any deduction in accordance with the provisions hereinbefore referred to which are set out in the Fifth Schedule hereto”.
18. Clause 1 of the Fifth Schedule refers to payment by the Lessee of one tenth of the aggregate cost to the Lessor during such year of the term of complying with the Lessors’ covenants in this Underlease as to the repair and maintenance of the Flat Block.
19. The Lessors’ covenants as to repair and maintenance of the Flat Block are contained in clause 4 of the Lease.

20. Clause 4(iii) as set out at paragraph 15 above sets out the Lessors covenants regarding the maintenance of the Flat Block.
21. In the light of the above the Tribunal is satisfied that the works for which dispensation is sought by the Applicant are qualifying works under the Act.
22. Dispensation from the consultation requirements of s.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
23. The case of Daejan Investments Ltd v Benson and others [2013] 1WLR 854 referred to above provides guidance to the Tribunal when considering the issues raised by all parties.
24. The documentation before the Tribunal contains no evidence of any objection from any of the Lessees and there is no evidence of prejudice to the Lessees as referred to in the Daejan Investments case.
25. For the above reasons, dispensation is granted from the consultation requirements of s.20 of the Act in respect of the proposed works as set out in the Application.
26. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
27. The Applicant is to send a copy of this determination to each of the Lessees who contribute to the service charge.

DATED this 21<sup>st</sup> day of September 2023

AR Phillips  
Tribunal Judge