

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0047/03/23

In the Matter of: Premises at 1-26 Tabernacle Chapel Flats, Garth Road, Bangor, LL57 2RL

And In the Matter of: An Application under Section 20ZA of the Landlord and Tenant Act 1985

APPLICANT: Thomas Owen on behalf of
Tabernacle Chapel (Bangor) Management Company Ltd

RESPONDENTS: Leaseholders/Tenants
1-26 Tabernacle Chapel Flats, Garth Road, Bangor, LL57 2RL

Type of Application: To dispense with requirements to consult lessees

Tribunal: Claire Jones (Chairman)
David Evans FRICS (Valuer Member)

Venue: Determined on the papers

Date: 6 September 2023

DECISION

The Tribunal grants the Applicant's Application under Section 20ZA of the Landlord and Tenant Act 1985 to dispose with the relevant consultation requirements under Section 20 of the Landlord and Tenant Act 1985 in relation to qualifying works.

Background

1. The Applicant is Tabernacle Chapel (Bangor) Management Company Ltd, which has repair obligations in relation to the Premises referred to above, and the Application is made on its behalf by the Company Director, Mr Thomas Owen.

2. The Respondents to the application are the leaseholders of the residential flats within the Premises and are for ease of reference referred to as 'the Tenants' in this Decision.
3. The issue for the Tribunal to determine is whether or not it is reasonable to dispense with statutory consultation requirements in this case.
4. The Application to be considered by the Tribunal is dated 27 February 2023. The works for which consultation dispensation was sought, are to 'replace alarm system throughout property' at the above Premises.
5. The Applicant indicated that it was in agreement for the matter to be determined on the papers and without an oral hearing. In addition, none of the Tenants responded to the Tribunal's Directions Order as mentioned below. The Tribunal was therefore satisfied that it could determine the application on the papers.
6. The Tribunal did not inspect the Property and considered that the nature of the application made it unnecessary, as it would not assist the Tribunal's determination as to whether consultation could be dispensed with. It accordingly met using remote technology at 10.00am on 6th September 2023 to consider the written evidence before it.

Directions Order

7. Following receipt of the Application by the Tribunal Office, a Directions Order dated 28 March 2023 was made by the Procedural Chairman.
8. The Directions ordered the Applicant to file and serve a Statement by 21 April 2023 to provide details of the qualified works involved, to provide any further representations as to why dispensation was sought from the consultation requirements, and why it was reasonable to dispense with them. The Directions also ordered the Applicant to provide submissions on whether or not there would be any prejudice suffered by the Tenants if the application was granted. Finally, they invited further submissions and case law in support of the application.
9. The Directions recorded that none of the Tenants had applied to be joined as Respondents after being invited by the Tribunal to do so. The relevant invitations were dated 3 and 7 March 2023 and provided the opportunity for the Tenants to be joined as a respondent to the Tribunal proceedings if they wished to oppose the works. The invitations stated that if no response was received, it would be assumed that the recipients did not oppose the application and were happy for the remedial works to proceed.

Relevant Legislation and Caselaw

10. Section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') provides the Tribunal with powers to determine Applications to dispense with the consultation requirements for

any 'qualifying works', being works on a building or any other premises. If satisfied it is reasonable to do so, it may dispense with those requirements.

11. Section 20 of the 1985 Act limits recovery of the cost of qualifying works from each tenant by service charge, to £250 in circumstances where consultation requirements have not been complied with, unless dispensation is given by the Tribunal under Section 20ZA.
12. The Supreme Court in *Daejen Investments Limited -v- Benson and Others* [2013] UKSC 14 provided guidance in relation to Section 20ZA Applications as follows:

12.1 The purpose of Section 20ZA and related sections of the 1985 Act is to ensure that tenants are not required to pay for unnecessary services, or services of a poor standard. It also ensures that tenants are not required to pay more than they should for services which are necessary, and to ensure that such services are provided to an acceptable standard.

12.2 A Tribunal considering an Application under Section 20ZA should consider the extent, if any, to which tenants are prejudiced by failure to comply with consultation requirements.

12.3 A Tribunal has power to grant dispensation on terms it considers appropriate, as long as the terms are appropriate in their nature and effect.

Consultation Requirements

13. The consultation requirements are contained in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 and require service of Notice of Intention to carry out qualifying works. The Notice must describe the works, the reasons for considering it necessary to carry out the proposed works and to provide estimates for the cost of the works. The tenants then have an opportunity to respond to the Notice and the Landlord is required to have regard to any observations made.

The Applicant's Case

14. The Application of 27 February 2023 referred to the qualifying works being '*urgent to make safe*' the Premises.
15. As to any consultation carried out, the Application stated that; '*Formal Section 20 process has been started. Notice 1 has been issued. 4 contractors have been invited to tender of which 3 provided quotes*'. The Application explained that dispensation was being sought from consultation requirements '*due to the urgency of the work required to ensure fire safety of all residents*'.

16. Whilst unfortunately, the Applicant did not provide a formal Statement as ordered in the Directions, it did however produce to the Tribunal a sample Lease, Enforcement Notice, Quotes and Notices to Tenants. It also produced a letter from a property management agency dated 5 April 2023, which provided advice to the Applicant as to what might be included in such Statement.
17. The sample Lease provided for the Applicant to carry out various works and for the payment by the Tenants of a variable service charge regarding such works. This includes steps for replacement of parts of the Premises and for complying with any statutory requirements relating to the Premises.
18. The Applicant also supplied a copy Enforcement Notice which it had received from North Wales Fire and Rescue Service dated 2 February 2023 under the Regulatory Reform (Fire Safety) Order 2005 Article 30, referencing that *'people were unsafe in case of fire'*. The Enforcement Notice required measures to be taken to adequately protect people in case of fire and required certain steps to be taken by 28 April 2023.
19. The Enforcement Notice further explained that work was necessary to detect fire and raise the alarm. The required action, in summary, was that due to the complexity of the building, a mixed system would be most suitable. This would consist of *'an addressable panel system with detection coverage in all communal areas and an interlinked heat detector'* and also, *'a stand-alone interlinked main powered fire alarm and detection system.'*
20. The Reason for the Notice was stated to be: *'The fire detection system is inadequate for the type and use of this premises as it does not operate correctly and sounders in some flats are not working correctly.'*
21. The Applicant also supplied a copy of *'Notice 1'* dated 2 February 2023, which was a notice to all Tenants headed *'Notice of Intention to carry out Works'*. The qualifying works in the Notice were described as the *'Replacement, Renewal & Repair of the alarm system and associated fittings throughout the premises'*.
22. The Applicant considered that the qualifying works and provision of a replacement alarm system was allowed for in the Lease. It invited Tenants to provide observations in relation to the proposed works. It also provided the opportunity for the Tenants to propose the name of a person from whom the Applicant should try to obtain an estimate for carrying out of the proposed works.
23. The Applicant also produced evidence of quotes which it had received from three separate firms which were all for in excess of £30,000 plus VAT as well as a Management Agent's fee. It also produced *'Notice 2'* being a *'Statement of Estimates'* dated 24 March 2023 which it indicated that it had served upon the Tenants. This also recorded that there had been one observation received during the initial period, relating to whether the qualifying works would take place before the works to the roof and other areas relating to water ingress.

The Applicant's response was; *'Due to enforcement notice and Fire Authority recommendations, this work has to be carried out as soon as possible, and therefore before any other works to the building.'*

24. Finally, the Applicant indicated that a letter was sent to Tenants on 14 February 2023 and that this explained that an Enforcement Notice had been received from the Fire Authority and that the current Application was being made to the Tribunal *'due to time constraints.'* It stated that as the works had been budgeted for, it was not anticipated that any extra payment would be required above the regular service charge payments for the year. It also referred to the process which had been used to obtain quotes and to invite comments or questions.
25. The letter from the Property Management agency to the Applicant dated 5 April 2023 indicated *'Reasons for the Application for Dispensation'* being that the current alarm system was not fit for purpose and that there were issues with detection. It also referenced the Enforcement Notice requiring works to be completed before a full section 20 consultation could take place and pointing out a high risk should a fire break out, given current system issues.
26. As to whether there would be prejudice caused to Tenants, the agent advised that there would be no prejudice suffered, as four quotes had been sought and three received for the full system. It said that the cheapest contractor had its plans amended by the fire service, and the new cheapest contractor failed to submit plans for approval, *'therefore the cheapest contractor with a valid quote has been instructed to complete the works.'*
27. In a letter to the Applicant dated 2 February 2023, the Property Management agents indicated that it would ensure through investigation, to ensure that the recommended contractors were competent to take on works of this nature. It said that *'Notice 2'* being the *'Statement of Estimates'* would be issued as soon as it received tenders for works and the Stage 1 consultation period had expired.
28. Finally, as to the *'Notice 2'* being the *'Statement of Estimates'*, the accompanying letter from the agents advised that there would normally be a 30-day consultation period, but due to urgency, the Enforcement Notice and this Application, *'these works will be instructed imminently'*. It is not clear whether the works have since been carried out, however it is assumed for the purposes of this Decision that this is the case. The letter further confirmed that the Applicant would be entering into a contract with a specified contractor. The reason was that its *'lead time for commencement of works on site and their estimated project duration are much shorter'*. Another contractor failed to submit the relevant plans and drawings to allow approval by the fire service.

The Respondents' Case

29. None of the Tenants had sought to be joined as Respondents following the Applicant's service of Notices upon them and also in response to the Tribunal Office's correspondence. Consequently, given that none of the Tenants applied to be joined in as Respondents, and given the contents of the Tribunal's correspondence with Tenant, the Tribunal proceeded on the basis that the Application was unopposed.

Reasons for the Decision

30. Notwithstanding that the Application was deemed to be unopposed, the Tribunal continued to fully consider all the facts and evidence before reaching its Decision. The Tribunal found that the replacement of the fire alarm system was subject to the requirements of section 20ZA of the Act and therefore required consultation with the tenants, unless dispensation was given.
31. The issue for the Tribunal to decide is whether it is reasonable for qualifying works to proceed without the Applicant first complying with all statutory consultation requirements. The consultation requirements provide for transparency and accountability. They ensure that Tenants know about and are able to comment on plans to carry out works before those decisions are taken. It is reasonable that the consultation requirements are complied with, unless there are good reasons for dispensing with any of them on the facts of a particular case.
32. To decide whether to allow the Application to dispense with the consultation requirements, the Tribunal had to consider whether there was a good reason why the works could not be delayed until the requirements had been complied with. The Tribunal therefore carefully considered the competing factors. These were the need for swift remedial action to ensure that the Premises were safe on the one hand, and the legitimate interests of the Tenants being properly consulted before works took place on the other. The Tribunal considered whether the balance fell in favour of permitting the works to have been undertaken without the full range of consultation, or whether it fell in favour of prior consultation in the usual way. 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 Tenants consent to the grant of dispensation.
33. In this case, the Tribunal was satisfied that there was overwhelming evidence that the works were urgent. The Tribunal concluded that the balance in this case fell clearly in favour of granting the Application and was satisfied on the basis of the written evidence before it that it was reasonable to grant the Application for dispensation. This was particularly in the light of the Enforcement Notice served upon the Applicant by the Fire Authority, which highlighted the need for replacement works to the fire safety system to take place as a matter of urgency due to the high risks involved. It also noted the lack of objection to this work from the Tenants in response to various Notices and correspondence.

34. As to whether the dispensation would prejudice Tenants, the Tribunal noted that four quotes had been sought by the Applicant. Also, the chosen contractor provided the lowest quote in relation to those firms who were able to provide necessary plans and specifications required by the Fire Authority. It also had shorter lead-in times for commencement of the works. The Tribunal noted that the Applicant had written to the Tenants to explain its reasoning for this choice. The Tribunal therefore considered that the Applicant had minimised prejudice to the Tenants in this regard.
35. In addition, whilst the Applicant fell short of fully meeting the consultation requirements, the Tribunal considered that the Applicant had substantially met most requirements. It had communicated with Tenants and responded to observations. It therefore considered that the Applicant had minimised possible prejudice to the Tenants. The Tribunal appreciated that dispensing with the full extent of the consultation requirements in this case may have avoided any practical problems and delays caused by the strict consultation requirements and timescales. It also considered that the replacement works were of clear benefit for the safety of all Tenants and that dispensation was appropriate in this case. Indeed, the Tribunal considered that there would be a prejudice caused to Tenants should the Enforcement Notice not be complied with as soon as possible.
36. In determining whether to grant dispensation in respect of the Application, and for the avoidance of doubt, the Tribunal makes no determination as to whether the final costs or whether any service charge levied, are reasonable or payable.
37. In conclusion, and having carefully considered all the available evidence, the Tribunal is satisfied that this Application for dispensation should be granted with immediate effect.

Dated this 21st day of September 2023

**C Jones
Tribunal Judge**