

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

Reference: LVT/0016/08/23

In the matter of Premises at Ty John Roberts, 53 Richmond Road, Cardiff, CF24 3AR

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

APPLICANT: Warwick Estates Property Management Limited

RESPONDENTS: The leaseholders at Ty John Roberts, 53 Richmond Road, Cardiff

Tribunal: Mr. M Hunt (Tribunal Judge)

Mr. K. Watkins (Surveyor)

Date of decision: 28 November 2023

**DECISION**

Dispensation from consultation is granted in respect of the roof repair and related works specified in the application (the “Works”) on the following conditions.

1. Within 21 days of the date of this decision, the Applicant must provide to the leaseholders a statement providing details of all estimates received for the Works and whether these were from persons connected or unconnected to the landlord and Applicant (as defined in paragraph 4(7) of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (Wales) Regulations 2004). Copies of any written estimates obtained must be provided or made available for inspection. If no estimates were obtained, the Applicant must confirm whether the contractor selected – Infinite Solutions (Cardiff) Limited – is connected to the landlord and/or Applicant.
2. Within 21 days of the date of this decision (by no later than 2<sup>nd</sup> January 2024), the Applicant must provide a statement to the leaseholders to explain why it awarded the contract for the Works to Infinite Solutions (Cardiff) Limited.

For the reasons given below, the Leasehold Valuation Tribunal finds that it is reasonable to dispense with the consultation requirements in respect of the Works on these two conditions. This was the sole issue for the Tribunal to determine. It makes no findings as to any other issues, including the reasonableness of the Works and contractor chosen, or of the cost of the Works.

contains a number of leasehold flats. Although the Tribunal has not been provided with a copy of any lease, it appears that the landlord is responsible for the upkeep and repair of the Appeal Property, including the roof, and that it can charge the costs of repair to its leaseholders through a service charge.

2. Due to water ingress, the Applicant arranged for the Works to be undertaken. It appears that, although the most pressing repairs were completed, some works may remain outstanding. It appears that the landlord originally believed the cost of the Works would amount to less than £250 per leaseholder. It transpired that the cost of the Works exceeded this amount. If it wished to charge leaseholders greater than £250 each, prior to contracting for 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”). This is the effect of Regulation 6 read alongside s.20 of the Landlord and Tenant Act 1985. No valid consultation took place. In order to charge leaseholders more than £250 each in relation to the Works, the landlord must therefore obtain dispensation from the consultation requirements.
3. Whether to grant that dispensation is the only issue before this Tribunal.
4. On 7 September 2023, 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 Candice Morgan. 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) ... 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. Part 2 of Schedule 4 outlines the specific consultation requirements and is reproduced in its entirety in an annex to this decision. Of relevance to this decision are parts of paragraphs 4 and 6. Paragraph 4 requires a landlord to obtain at least two estimates for the works, including one from a party unconnected to the landlord, and to make all estimates available to the leaseholders for inspection. Paragraph 6 requires a landlord to state reasons for entering into a contract if the lowest estimate was not pursued.
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 suffer 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 were required because of water ingress. No party has suggested otherwise.
12. The Applicant submits that, due to the emergency nature of the Works and it apparently believing initially that the cost of the Works would not exceed the relevant £250 per leaseholder threshold, it did not need, or had no time, to consult with leaseholders prior to starting the Works. The Tribunal is not aware of any estimates of the costs of the Works having been sought in advance.
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 the leaseholders 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. These require at least two estimates for the Works to have been sought and presented to the leaseholders, and an explanation to be given to the leaseholders if the cheapest estimate was not pursued. The Tribunal readily accepts that certain

elements of the consultation requirements could not reasonably be followed in this case due to the emergency nature of the Works, including allowing for a 30-day period for observations or nominations of people from whom estimates 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 provide details to the leaseholders of all estimates obtained, or for failing to provide reasons for awarding the contract to Infinite Solutions (Cardiff) Limited if it did not provide the lowest estimate. Bearing in mind that decisions as to contracts awarded 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 potentially prejudicial to them not to have access to it. It is not for this Tribunal upon this application to determine any issues as to the service charge itself, 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 on the following conditions. Firstly, that within 21 days of the date of this decision (2<sup>nd</sup> January 2024) the Applicant provides to the leaseholders a statement providing details of all estimates received for the Works and whether these were from persons connected or unconnected to the landlord and Applicant (as defined in paragraph 4(7) of Part 2 of Schedule 4 to the Regulations), either including copies of any written estimates obtained or making them available for inspection. Alternatively, providing a statement to explain that no estimates were sought and whether Infinite Solutions (Cardiff) Limited is connected to the landlord or Applicant. Secondly, that within 21 days of the date of this decision (2<sup>nd</sup> January 2024), the Applicant must provide a statement to the leaseholders to explain why it awarded the contract to Infinite Solutions (Cardiff) Limited. Both statements can be provided in a single document.

Dated this 12<sup>th</sup> day of December 2023

M Hunt  
Tribunal Judge

## **Annex**

Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (Wales) Regulations 2004

### **Notice of intention**

#### **1.—**

(1) The landlord shall give notice in writing of intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

### **Inspection of description of proposed works**

#### **2.—**

(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

### **Duty to have regard to observations in relation to proposed works**

#### **3.**

Where, within the relevant period, observations are made in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### **Estimates and response to observations**

#### **4.—**

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) a summary of any observations made in accordance with paragraph 3 and the landlord's response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

#### **Duty to have regard to observations in relation to estimates**

##### **5.—**

Where, within the relevant period, observations are made in relation to the estimates by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### **Duty on entering into contract**

##### **6.—**

(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) where observations are made to which (in accordance with paragraph 5) the landlord was required to have regard, summarise the observations and set out the landlord's response to them.

(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.