

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0011/06/23

In the Matter of: Premises at 1-29 (excluding 13) Garth Court, Abbey Road, Llandudno, Conwy, LL30 2HF

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

APPLICANT: Garth Court Flats (Llandudno) Limited

RESPONDENTS: Dewi and Anne Davies – Flat 2
Leaseholder Tenants
1,3,4,5,6,7,8,9,10,11,12,14,15,16,17,18,19,20,21,22,23,24,25,26, 27,28, Garth Court, Llandudno

TRIBUNAL: Kelly Byrne (Legal Chair)
Hefin Lewis (Surveyor Member)

VENUE: Determined on the papers

DECISION

The Tribunal grants the Applicant’s Application under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) to dispense with the relevant consultation requirements under Section 20 of the Landlord and Tenant Act 1985 in relation to qualifying works.

Background

1. By way of an Application dated the 15th June 2023, Ashley O’Brien, Company Secretary of Managing Estates Ltd (“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 interim repair work to the roofs of Block 1 and 2 at Garth Court, Abbey Road, Llandudno, Conwy, LL30 2HF (“the premises”).
2. The leaseholders at the premises were invited by the Tribunal to apply to be joined as Respondents in the proceedings, Mr and Mrs Davies of Flat 2 Garth Court, Llandudno are the only leaseholders who requested to be Respondents in these proceedings. Mr and Mrs Davies will be referred to as “the Respondents” throughout this decision.
3. It was agreed by the Applicant and the Respondent that the matter did not require an oral hearing and could be determined on the papers.

4. On 6th November a site inspection was carried out by the Surveyor Member Mr Lewis. Mr Lewis inspected the internal and external of the premises. He was given access to flats 22, 28 and 29 and made the following observations:

Flat 22 – Top floor apartment of Block 2 – Damp staining recorded to hall, bedroom and toilet. Living room ceiling recently decorated.

Flat 28 – Top floor flat of Block 1 - Significant damp staining noted to living room above window opening. Further damp staining to bathroom and hallway ceiling light.

Flat 29 – Top floor flat of Block 1 - Significant damp staining noted to living room above window opening and to kitchen window

5. The Tribunal was convened via the Teams platform on 13th November 2023, having reviewed the evidence, the Tribunal issued a further Directions Order. The Tribunal reconvened on 30th November 2023 to consider the application.

Procedural History

6. On the 15th June 2023 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 with all or any of the consultation requirements provided by Section 20 of the Act in relation to the interim repair of the roofs at Block 1 and 2 of the premises.
7. On 23rd August 2023, the procedural Chair issued amended Directions which were provided to both parties. The Directions ordered that by 4pm on 16th August 2023 that the Applicant serve on the Tribunal and the Respondent the details of the qualifying works involved, any further representations as to why dispensation is sought and why it is reasonable to dispense with the consultation requirements, submissions on whether or not there will be any prejudice suffered by the Leaseholder tenants if the application is granted and any further submissions and/or Case Law in support of the application
8. That by 4pm on 6th September 2023 the Applicant was to serve on the Tribunal and Respondent, a copy of Applicant's witness statement, a copy of the 'separate covenants' referred to in Appendix D, copies of the invoices paid to date (re roof of taller Block 1 & Block 2), together with a note of any potential amount currently outstanding/due to be paid, a cost summary & total in respect of work remaining (re roof of block 1 & 2), any other work required on the roof during the financial year ending 31 May 2024 and details of any fixed price agreed on the remaining work.
9. By 4pm on 20th September 2023 the Respondents were directed to serve on the Tribunal and the Applicant, a witness statement, any response to the Applicant's Statement and to the information in the application form, submissions upon whether it would be reasonable for the tribunal to dispense with the consultation requirements or if not reasons why, details of any prejudice that the Respondent Tenant(s) may

suffer if dispensation from the consultation requirement were to be granted, any other submissions or documents upon which the Respondent(s) wish to rely including details of any other proposals or costings for the work that is the subject of the consultation application and any other submissions or case law in opposition to the application.

10. As stated, the Tribunal convened on 13th November 2023 via the Teams platform, in order to consider the application on the papers. Having reviewed the evidence provided by both parties, the Tribunal noted that the Applicant had failed to provide some of the information requested in the Directions dated 23rd August 2023. The Tribunal issued further Directions requesting that within 7 days of the Directions Order, that the Applicant provide a signed copy of the witness statement of Phillip Tremain, copies of invoices paid to date (re roof of taller Block 1 & Block 2), together with a note of any potential amount currently outstanding/due to be paid, details of the two other contractors who were approached to provide a quote for the repair works, as referenced in Paragraph 9 of the statement of Phillip Tremain and confirmation of who has signed the 'Statement of Truth' dated 16th August 2023 on behalf of Garth Court Flats (Llandudno) Limited.

The Law

11. 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...

12. Regulation 7 of the Regulations provides as follows (relevant excerpt).

7. The consultation requirements: qualifying works

...

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), 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.

13. Paragraph 6 of Part 2 of Schedule 4 provides as follows (relevant excerpt).

Duty on entering into contract

(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) ...

(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.

14. 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 in **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 have suffered 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).
15. 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).

Consultation Requirements

16. 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.

A Summary of the case for the Applicant

17. A summary of the Applicant's case is set out below, it is to be noted that the Tribunal considered all of the evidence submitted to it by the Applicant.
18. The Applicant's case as set out in the application form, witness statement of Ashley O'Brien dated 16th August 2023 (with attached Appendices) and the witness statement of Phillip Tremain dated 4th September 2023, is that they received a quote for Interim repair work to the roof of the building (block 2 of 3 floors) and work commenced mid-April 2023. The works included the interim repair to the roof of Block 2 due to water leaking into the 2 top floor apartments. They state that the interim repairs were planned to patch up the leak while the Applicant commenced the s.20 process of consultation for the full replacement of the roof. They state that after

engaging with a contractor, water leaks also appeared on the taller building (Block 1 of 8 floors) and that they requested quotes for further repairs to this block whilst contractor on site.

19. The Applicant states that the roofs of both Blocks 1 and 2 are a combination of both flat areas and mansards. They state that the roof to Block 1 is aging and that it has not been replaced for many years, with the most recent work being done approximately 14 years ago, that block 2's roof was replaced in 2019, but that the poor quality of workmanship and some incorrect fitting procedures, has resulted in significant failures presenting within a few years of installation. The Applicant states that an independent report has concluded that only a complete roof replacement would resolve the issues. The Applicant states that legal action has been considered in respect of the defective installation of the roof, but that for various reasons this is not a viable option.
20. The Applicant states that they approached 3 companies to quote for the interim repair work, but that only one company was willing to undertake the work and that they could not guarantee that the interim works would prevent the roofs from leaking. The Applicant states that they had little option but to expedite the repairs to prevent further water ingress into the flats.
21. The Applicant states that it was hoped that the interim repairs would resolve the issues until a full roof replacement could take place. That repairs were initially carried out, but that water ingress continued and that further issues in separate roof areas were identified. This meant that the contractors had to return to check their repair work and carry out further remedial works. That this further repair work required additional quotes for surface repair and the additional doubling of the scaffolding. The Applicant states that this significantly increased the repair costs.
22. The Applicant states that as the scaffolding had to remain in situ for a sufficient time to ensure the effectiveness of the repairs, this also raised the costs of the repairs.
23. The Applicant states that the reason for not commencing s.20 consultation for the interim repair work was because the planned costs were below the 'qualifying works' threshold of £250 per flat.
24. The Applicant clarifies that the application before the Tribunal is solely in relation to an application for dispensation of the s.20 consultation for the interim repairs to the roofs at Block 1 & 2 and is entirely separate from the s.20 that has been served on the leaseholders on 28th June 2023 in respect of the full replacement of the roofs on Blocks 1 & 2.

Consultation

25. In relation to being asked what consultation has been undertaken in respect of the interim repairs to the roof, the Applicant states that the leaseholders had been advised of the need to do repairs to Block 2 and further leaks appearing in block 1 via a shareholder update document on 16th March 2023.

26. The Applicant states that they also advised the shareholders of the estimated cost of replacing the block 2 roof and that it would require consultation. The Applicant states that the issues of the roof replacement (block 1 and block 2) was further discussed at their AGM held on 25th April 2023 and that the shareholders were advised that they would soon receive a notice under s.20 for the replacement. The Applicant states that at the time of the AGM, the interim roof repairs had commenced on both Block 1 and Block 2.
27. The Applicant states that as a result of the unforeseen costs for the interim repairs, that they have gone above the threshold for 'qualifying works' under s.20 of the Act, but that the costs were unavoidable given the evolution of the areas of roof failure.
28. The Applicant via a witness statement provided by Phillip Tremain, dated 4th September 2023, states that the current costs of the works, at that time, were £22,104, with 45% of the costs being attributed to the scaffolding.

Dispensation

29. The Applicant states that whilst undertaking a further inspection of both blocks during initial repair work, previously unidentified issues with block 1 and Block 2 roofs were revealed. Interim repairs to the roofs resolved the newly identified issues which were proceeded with whilst there was extensive scaffolding to both buildings to minimise additional costs and urgently resolve the health and safety issues to the residents affected.
30. The Applicant states that they are seeking dispensation of the consultation process for the current interim repairs to the roof of both Block 1 and Block 2 as the costs (including newly identified issues) for the repairs has exceeded the 'qualifying works' threshold.

Reasonableness

31. The Applicant states that they acted reasonably in dispensing with the s.20 consultation process as the repairs were required urgently due to the impact the leaks were having on the owners of the three flats that were being affected. They state that leaks were causing excessive damages to the interiors of Flats 22, 28 and 29 of which they needed to mitigate for insurance purposes. The Applicant states that they also needed to ensure that the leaks did not spread and affect further apartments resulting in further damages. They state that the leaks were not only affecting the interior and exterior of the property and flats, but also the owner's quality of living as some were unable to use their bedrooms due to the amount of water leaking through the roof.
32. By way of an example, the Applicant states that water ingress has significantly impacted on the living conditions within flat 22. That at times of heavy rain, large amounts of rainwater have penetrated the roof, causing a significant amount of water to come through the ceiling light fitting into the main bedroom. This caused the electricity to be isolated within this room, making it unusable and potentially hazardous.

33. The Applicant states that throughout the process that they have been mindful of the need to balance the outgoing costs, with the impact on health, safety and well-being of the leaseholders who have been significantly impacted by the water ingress into their properties.

Prejudice

34. The Applicant submits that there will not be any prejudice suffered by the Leaseholders if the application is granted, this is on the basis that the works required fall under the Applicants obligations under the lease and in particular Paragraph 4 section (iii) (extract provided).

35. The Applicant states that the leaseholders by way of a separate covenant have agreed to contribute towards the whole cost of the Applicant undertaking its duties. That the Applicant operates with a committee, whereby quotes for the works have been obtained but due to the nature of the damage the works had to commence to prevent further damage to the building.

36. The Applicant submits that the Tribunal are only being asked to permit the Applicant to dispense with the requirements to consult due to the urgent nature of the works and not to make any submission on the reasonableness of the costs incurred.

A summary of the case for the Respondent

37. A summary of the Respondent's case is set out below, it is to be noted that the Tribunal considered all of the evidence submitted to it by the Respondent.

38. The Respondent has submitted a witness statement by Dewi Wyn Davies dated 19th September 2023 who is the joint owner of the leasehold at 2 Garth Court.

39. The Respondent states that if you consider the invoices provided by the Applicant, in particular invoice No.INV-0643 dated 28th March 2023 for £372, which they state is in respect of a 5% deposit for the works, which they calculate as being £7,440, which would take the 'qualifying works' over the £250 threshold. They have calculated this based on:

£250 x 28 flats = £7,000

40. The Respondent states that the Applicant was aware in March 2023, based on the original quote of £7,440, that they were exceeding the threshold and that they should have consulted under s.20 of the Act.

41. The Respondent states that the Applicant has previously failed to follow s.20 consultation, when undertaking the roof repairs in 2019.

Reasonableness

42. The Respondent's submit that dispensation should not be granted in respect of the interim roof repairs at the property. They state that the fact s.20 consultation was not undertaken in respect of the original roof repair in 2018/2019, is of concern to them, given they were given legal advice on the procedure. The Respondents state that this failing has led to the current request for interim repair works, where the costs exceed £23,000. The Respondent states that they are constantly being requested to pay service charges that are not correct or legally due.
43. The Respondent states that given the nature of the repairs and the height of buildings involved, that the required scaffolding would be costly and highly likely to exceed £7,000, £250 per flat.
44. The Respondent states that the comments made on the Applicant's application from and a note of the Committee meeting dated 2nd July 2023 are potentially misleading/inaccurate.
45. The Respondent states that in s.13 of the Applicant's application form to the Tribunal, that they state that the works commenced in Mid-April 2023 and that at this stage the quotes did not exceed the 'qualifying works' threshold, but that the Applicant was in receipt of the quote ahead of the update to the leaseholders on 16th March and also the Committee meeting on 23rd March 2023. They also point out that the application for dispensation is dated 15th June 2023.
46. The Respondents refer to a committee note dated 2nd July 2023, which they state was circulated by the Applicant, and it refers to the cost of the interim repairs exceeding £18,000, which triggers the requirement for a s.20 consultation. The Respondent states that this is misleading, as the Applicant was aware that the repairs would exceed the threshold in March 2023. They question why the Applicant had not liaised with the shareholders given the previous history of works carried out in 2018/2019.
47. The Respondent states that dispensation is being requested for something that in their view should have been done correctly in the first instance. The Respondents make reference to the engagement of a caretaker on a long-term agreement, without approval. The Respondent also makes reference to the repairs carried out in 2018/2019 to the roof and legal advice received at that time.
48. The Respondent questions the professional management of the premises and refers to various correspondence.

Prejudice

49. The Respondent states that the interim works, which have been absent of s.20 consultation has cost approximately £23,000, which divided between 28 flats is £822. They state that they have been prejudiced by £572. The Respondent also refers to the 'Caretaking maintenance' being £7,440 divided between 28 flats.

50. The Respondent refers to the lack of s.20 consultation for the works carried out in 2018/2019 that they have been charged for reserve element and that in total their potential prejudice is at £3,089, with £2,429 relating to s.20 consultation failures.
51. The Respondent states that they have suffered financial prejudice as the result of the absence of consultation and that repair costs could have been avoided if there had been a guarantee/warranty for the previous works to the roof. They state that had consultation taken place, they could have assisted in more appropriate and comprehensive due diligence.
52. The Respondent states that the interim repair works have potentially been rushed without appropriate care, due diligence and planning, resulting in costs much higher than they would otherwise be. They submit that if dispensation is granted, that it sends out the wrong message to the Applicant.
53. The Respondent goes on to refer to service charge demands, funds that are being held by the Applicant on account and provides calculations in respect of the service charge demands.
54. The Respondent also relies on various correspondence between the Applicant and the Respondent between 2021-2023. They also refer to minutes of the Committee meetings dating back to 2016.
55. The Respondent refers to the case of **Francis V Philips 2014 EWCA CIV 1395** regarding what is deemed to be 'qualifying works' and the case of **Daejan Investments Limited v Benson and Others [2013] UKSC 14.**
56. The Respondent has not produced any independent evidence on the reasonableness of the costs incurred.

Reasons for the Decision

57. The Tribunal fully considered all of the facts and evidence before reaching its Decision. The Tribunal found that the interim repair works to the roofs of Blocks 1 & 2 were subject to the requirements under section 20ZA of the Act, given the cost of the works was in the region of £24,000, to be divided between 28 flats, which takes the amount over the £250 threshold. Therefore, the Applicant was required to consult with the tenants, unless dispensation was given.
58. 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.

59. The Applicant states that they did not comply with the s.20 consultation as the original cost of the interim repairs was below the threshold amount of £250 per Tenant. In this case the total amount of the repairs would have to exceed £7,000. They state that they did however inform the leaseholders via a shareholder's update dated 16th March 2023 that works were to be undertaken.
60. The Tribunal note the submission from the Respondent regarding Invoice Number INV-0643 dated 29th March 2023 for £372.00, which the Respondent states is a 5% deposit for the works, they calculate the total as being £7,400. The Respondents submission is that the Applicant knew from the original quote that the total cost of the repair works would be above the threshold amount.
61. It is clear on the evidence that having carried out initially interim repairs, that further works were required, this is evidenced by invoices and an excel spreadsheet supplied by the Applicant. The final costs being listed as £23,460.00 having been paid and £648 left to be paid, totalling £24,108 (Inc. VAT). It is also clear to the Tribunal that it was not reasonable for the Applicant to enter into s.20 consultation, once they were made aware of the increased costs, given the contractors were already on site; any delay would have been to the detriment of the Tenants.
62. 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 respondents assert the original quote provided to the Applicant was above the threshold amount, and therefore requiring consultation, but in any event, the Tribunal is satisfied from the evidence that the works were urgent, given the water ingress into flats 22, 28 & 29 and the subsequent damage caused, which was witnessed by Mr Lewis during the site inspection on 6th November 2023.
63. It is for the Respondents to prove on a balance of probabilities that the failure to consult under s.20 has caused them prejudice. The Respondents state that they have suffered prejudice as summarised in paragraph 49-56 of this decision. The Tribunal would draw to the attention of the Respondents that the application before them is purely in relation to the granting of dispensation for the interim works carried out to Block 1 and 2. Any issues relating to repairs undertaken in 2018/2019, the award of a maintenance contract without consultation and queries regarding the level of service charge are outside the jurisdiction of this Tribunal, based on the application before it. The Tribunal, do however note the point raised regarding the Applicant's knowledge of the s.20 provisions, having been through a similar process previously.
64. The Tribunal therefore carefully considered the competing factors. These were the need for swift remedial action to ensure that the roofs were repaired 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.

65. As to whether the dispensation would prejudice Tenants, the Tribunal noted that the Applicant states that they tried to obtain 3 quotes, but that in the end only one company were willing to quote for the works. The costs of the work have been evolving due to the increase in the number of repairs of the roof and the Applicant made the decision to continue with the same contractor whilst they were on site. As stated, it is clear to the Tribunal that the works needed to be undertaken and no evidence has been produced to show that the costs incurred are at an unreasonable rate. The Tribunal, based on the facts and evidence, find that the Tenants suffered no prejudice.
66. In this case, 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.
67. The Tribunal comment that the application for dispensation could have been made to the Tribunal more expediently given the repair works were commenced in mid-April 2023 and the application was made 15th June 2023.



Kelly Byrne
Tribunal Judge

Dated this 6th day of February 2024