

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Case Reference : LVT/0025/11/23

Property : Woodley Court
Waterhall Road
Cardiff
CF5 2SR

Applicant : JFT Developments Ltd

Representative : D Britton Managing Agent

Respondents : The Leaseholders Tenants
Woodley Court, Waterhall Road, Cardiff

Representative : N/A

Type of Application : Landlord and Tenant Act 1985
- section 20ZA

Tribunal Members : Tribunal Judge J Rostron
Andrew Lewis FRICS

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 repairs regarding leak from balcony of flat 9 resulting in remedial works to flat 5.

REASONS

Background

1. An application dated 2nd November 2023 was made to the Leasehold Valuation 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 Woodley Court, Waterhall Road, Cardiff CF5 2SR (“the Property”) and was made by JFT Developments Ltd (“the Applicant”).
3. The Respondents to the application are the leaseholders of numbers 5 & 9 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 concern urgent remedial works to repair a leak to the flat roof of flat 5. These works are specified in an invoice by Roof Guard Services dated 20th & 27th October 2023 and 9 November 2023 which states; “Due to a leak in apartment 5 a new rubber EPDM roof membrane was fitted to the balcony above apartment 5 (apartment 9) was all sealed, the cladding and decking was removed in order to fit the rubber roofing. Once fitted the decking and plants etc were put back. Decoration work carried out at the above property, new plaster board ceiling fitted in the bedroom, plastered, painted and made good. All walls in the bedroom stain blocked and recoated in white emulsion, woodwork painted in a white gloss. Small bathroom (ensuite), ceiling and walls painted in a white gloss. Rubbish removed including old bed and carpets etc”.
6. On 16th November 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 2nd November 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 inspected the Property at 11.30am on 20th February 2024 where he was met by Ms Antoinette Williams Leaseholder. During the inspection it was noted that the works had been completed. The Tribunal met remotely at 2.00pm on 20 February 2024 to consider the evidence before it. The Managing Agent D Britton fully agreed with the need for the urgent repairs

Grounds for the application

9. The Applicant seeks dispensation from the consultation requirements and submits a brief description of the works in the application form dated 2nd November 2023 described by Daniel Britton Managing Agent that: -

“Surveyors and contractors have been investigating leak from the balcony of flat 9. The balcony cover has now been re-covered with EDPM rubber. The remedial works are now required for flat 5”.

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 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. It is reasonable that 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 balance of prejudice between the need for swift remedial action to ensure that the safe condition of the Property did not deteriorate further, and the legitimate interests of the leaseholders in being properly consulted.

The Tribunal must consider whether this balance favours permitting the works to have been undertaken without consultation, or whether it favours 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 leaseholders' consent to the grant of a dispensation.

17. In this case, given the urgent need to repair the leaking flat and lack of any objection from the residents, the balance is clearly 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 as 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 12th day of March 2024

Dr J Rostron
Tribunal Judge