

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Case Reference	LVT/0042/02/24
Property	1 -60 Watermark, Ferry Road, Cardiff, CF11 OJU.
Applicant	Watermark [Cardiff Bay] Management Company Limited
Representative	N/A
Respondents	The Leaseholders / Tenants 1 – 60 Watermark , Ferry Road, Cardiff, CF11 OJU.
Representative	Marc Hurn AIRPM Senior Property Manager
Type of Application	Landlord and Tenant Act 1985 - section 20ZA
Tribunal Members	Tribunal Judge J Rostron Surveyor Member David Evans 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 renewal of the Property’s boilers.

REASONS

Background

1. An application dated 8 February 2024 was made to the Residential Property 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 1-60 Watermark, Ferry Road, Cardiff, CF11 OJU (“the Property”) and was made by Watermark [Cardiff Bay] Management Company Limited (“the Applicant”).
3. The Respondents to the application are the leaseholders of the residential dwellings within the Property.
4. The only issue for the Tribunal to determine is whether 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 renew four boilers which are beyond economic repair. The works are required promptly to avoid any site wide outages should there be further deterioration of the hot water equipment.
6. On 18 March 2024 the Tribunal issued directions. 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 met remotely at 11.00am on 5 June 2024 to consider the evidence before it.

Grounds for the application

9. The Applicant seeks dispensation from the consultation requirements and submits in a witness statement dated 5 April 2024 made by Marc Hurn, Senior Property Manager of Warwick Estates that: -

“The existing boiler plant had reached an age where reliability was poor and cost of repair was uneconomical versus replacement. It is reasonable to consider dispensation to ensure that the hot water system and heating service received by residents on site is in keeping with the lease terms. Further, an exercise was completed by the installing company to source best value replacement boilers by inviting three different manufacturers to site to provide their quotations for the replacements. The cheapest of these quotes was selected and the new equipment benefits from a five-year warranty.”

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 the Applicant 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 leaseholder's consent to the grant of a dispensation.
17. In this case, given the urgent need to renew the boilers 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 an indication that the Tribunal views the amount of the anticipated service charges resulting from the works 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 11th day of June 2024

Dr J Rostron
Tribunal Judge