

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0014/07/24

Subject premises: Amity Court, Longueil Close, Atlantic Wharf, Cardiff, CF10 4EA

Subject matter: Application under Section 20ZA Landlord and Tenant Act 1985

APPLICANT: Amity Court RTM Company Limited

RESPONDENTS: The leaseholders at Amity Court, Longueil Close, Atlantic Wharf, Cardiff

Tribunal: Mr M. Hunt (Chairman)
Mr K. Watkins (Surveyor)

Date of decision: 24 September 2024

DECISION

Dispensation from consultation is granted in relation to the fire door rectification at Amity Court on the following conditions.

1. Within 21 days of the date of this decision, the Applicant must supply, free of charge, to the leaseholders a statement providing details of all quotes and estimates received for the fire door rectification and explaining whether these were from persons connected or unconnected to the Applicant and its managing agent. Copies of any written quotes and estimates obtained must be provided with the statement.
2. Within 21 days of the date of this decision, the Applicant must provide a statement to the leaseholders to explain why it awarded the contract for the fire door rectification to Global Facilities.

For the reasons given below, the Leasehold Valuation Tribunal finds that it is reasonable to dispense with the consultation requirements in respect of the fire door rectification 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 cost.

REASONS FOR DECISION

The Facts

1. The Applicant manages the premises at Amity Court, Longueil Close, Atlantic Wharf, Cardiff, CF10 4EA (the "Property"). It has engaged Ringley Wales and West Limited as managing agents. The Property contains a number of leasehold flats. Although the Tribunal has not been provided with a copy of any lease, it appears that the Applicant is responsible for the upkeep and repair of the Property, including the maintenance of fire doors, and can charge the costs of repair to the leaseholders through service charges.

2. The Applicant believed that the Property's fire doors were defective and required urgent rectification (the "Works"). It arranged for the Works to be undertaken by Global Facilities, commencing on 18 June 2024. On 8 July 2024 (the date this application was made), 36 fire doors were expected to require attention. By the time the Applicant filed its witness statement on 20 August 2024, it had identified that a further fire door needed rectification. The Works are expected to cost in the region of £17,916 (inclusive of VAT).
3. If it wished to charge any leaseholder greater than £250 for the Works, prior to concluding the contract with Global Facilities the Applicant was required to consult with leaseholders. This is the effect of section 20 of the Landlord and Tenant Act 1985 read alongside Regulation 6 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004. No valid consultation took place. The Applicant therefore seeks dispensation from the consultation requirements.
4. Whether to grant that dispensation is the only issue before this Tribunal.
5. On 1 August 2024, this Tribunal made directions for the preparation of the case and the submission of arguments and evidence. The Applicant filed a witness statement, the real substance of which extended to 8 lines. None of the leaseholders made any submissions or filed evidence. The Tribunal was concerned at the lack of information it was given relating to the background, chronology and estimates sought/quotes received. The Applicant did not provide a timeline to explain how and when it first became aware of any defective fire door(s), it gave no details of any consultation that took place (the application form referred to "limited consultation", but the witness statement said none had occurred), it did not explain the precise nature of the Works required, it gave no information about the circumstances in which Global Facilities was engaged or whether any alternative estimates or quotes for the Works were sought or received. Nevertheless, the Tribunal found that it had just enough information for it to be able to determine the application fairly. For the avoidance of doubt, the Tribunal did not expect a large amount of information. A few additional lines in the statement to explain the points mentioned above, together with copies of any relevant supporting documentation, would have taken the Applicant very little additional time to prepare. The information would have been useful to any leaseholder holding an interest in the proceedings and to the Tribunal in considering what, if any, conditions to impose on dispensation.
6. The application was determined on the papers, without a hearing.

The Law

7. Section 20ZA of the Landlord and Tenant Act 1985 (the "Act") 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...
8. Regulation 7 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (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.

9. Part 2 of Schedule 4 outlines the specific consultation requirements relevant to this application and is reproduced in an appendix 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 proposed 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. The Property appears to be managed by an RTM company. The references to the “landlord” should therefore be taken as references to the RTM company (in this case, the Applicant) in accordance with paragraph 4 of Schedule 7 to the Commonhold and Leasehold Reform Act 2002.
10. 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 (or the RTM company’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).
11. 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

12. The Applicant submits that the Works were required to improve the safety of leaseholders in the event of fire. No party has suggested otherwise. It also submits that, as the Works relate to fire safety, they were urgent and there was insufficient time to consult with leaseholders.
13. The Applicant provided no information about when it became aware the Works were required, what they involved, or whether it had approached any contractors for cost estimates before engaging Global Facilities.
14. The Applicant was unclear about the extent of any consultation that was attempted or undertaken with the leaseholders in the time available, or whether any of the requirements laid down in the Regulations had been met in part or in full. However, the Applicant submits that the leaseholders have not suffered any prejudice.
15. 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 accepts that it may not have been reasonable to follow certain elements of the consultation requirements if the Works were urgent, including for instance 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, it is no longer. The only obvious prejudice this has caused is that the leaseholders have been deprived of the opportunity to engage with the proposal and to make observations at the most pertinent time, before contracts are agreed. No leaseholders have indicated they would have made any, so the Tribunal is satisfied that it is reasonable to dispense with those requirements.

16. 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 Global Facilities if it did not provide the lowest estimate. The nature of contracts that are awarded by the Applicant, and the circumstances, may be relevant to the leaseholders in deciding whether to seek to challenge service charges, and to the assessment of their reasonableness if so. It is prejudicial to them not to have access to this information, information which they would have received had valid consultation taken place. It is not for this Tribunal to determine any issues as to the contract itself, or any service charge that results from it, but equally it is not for this Tribunal to dispense with consultation requirements without good reason.
17. Accordingly, this Leasehold Valuation Tribunal dispenses with all of the consultation requirements on the following conditions. Both conditions derive from the consultation envisaged in the Regulations.
18. Firstly, that within 21 days of the date of this decision 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 Applicant and its managing agent, enclosing copies of any written estimates obtained.
19. Secondly, that within 21 days of the date of this decision, the Applicant must provide a statement to the leaseholders to explain why it awarded the contract to Global Facilities. If the contractor had submitted the lowest estimate, this condition would go beyond what the Regulations require. However, the condition remains justified as it is unclear if any other estimates were sought and, if not, why not. In any event, both conditions also address the prejudice suffered by the leaseholders in not having had the benefit of consultation and the opportunity to engage with the proposal prior to the Works being commissioned.
20. Both statements can be provided in a single document.

Dated this 26th day of September 2024

M. Hunt
Tribunal Judge

Appendix

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.