Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0039/10/24

An application under section 20ZA Landlord and Tenant Act 1985 relating to roof repairs undertaken at Llys Newydd, Tir Einon, Llanelli, SA14 9DT.

APPLICANT: Gray's Inn Capital Ltd

RESPONDENTS: The tenants at Llys Newydd, Tir Einon, Llanelli

Tribunal: Mr M. Hunt (Chairman)
Mr H. Lewis (Valuer)

Date of determination: 18 November 2024

DECISION

1. Dispensation from consultation is granted in respect of the roof repairs undertaken at Llys Newydd, Tir Einon, Llanelli, SA14 9DT in September 2022, without conditions.

REASONS FOR DECISION

Introduction

1. The applicant is the freehold owner (the "Owner") of the premises known as Llys Newydd, Tir Einon, Llanelli, SA14 9DT (the "Property"). The Property contains a number of flats, which are leased to tenants. The tenants are the Respondents to the application. The Tribunal received submissions from two Respondents.

2. The application was originally made orally at a hearing on 5 September 2024. That hearing took place in proceedings brought by certain tenants under section 27A of the Landlord and Tenant Act 1985 (the "Act"), concerning their liability to pay service charges for the accounting period 2022-2023. The proceedings were given Tribunal case reference LVT/0021/10/23. At that hearing, it became apparent that the Owner had not complied with the consultation requirements mentioned in section 20 of the Act in relation to roof repairs undertaken on the Property in September 2022. The consequence was that no tenant could be required to contribute more than £250 towards the cost of those repairs unless the Tribunal were to grant dispensation from consultation. Mindful that the tenants should be afforded the opportunity to make submissions on whether dispensation should be granted, the Tribunal required the application to be renewed in writing. The Owner did so, and that application is the only matter that the Tribunal is presently considering. A fuller background, together with relevant

findings of fact, is provided in the Tribunal's decision under case reference LVT/0021/10/23 and is not repeated here. Where it is appropriate to refer to findings made in that case, it will be referred to as the "Previous Decision".

3. The Owner seems to believe that consultation would only have been required in relation to additional works that became apparent only after commencing the repair that was originally planned. The Tribunal disagrees. The estimate that was accepted was in the sum of £7,200 plus VAT, so a total sum of £8,640. This sum equates to a relevant contribution from at least some of the tenants in excess of £250. In any event, if the Owner wished to mitigate the risk of additional unforeseen expenditure, it could have conducted the requisite consultation, which (of relevant substance) requires only "estimates" to be shared with tenants for observation before entering into contract. Be that as it may, the Tribunal treated the application as encompassing all of the roof repair works undertaken in September 2022, and its decision would have been the same either way.

4. The application was determined "on the papers", without a hearing.

Facts

5. The Tribunal invites the parties to refer to the Previous Decision for an explanation of the background facts.

6. As far as relevant to this application, the facts were addressed in paragraphs 17-22 of the Previous Decision, which are copied here for ease of reference:

> "*17. In relation to the Property's roof, at some point in or around July 2021 the leaseholder of flat 21 reported to the Owner that she was suffering water ingress. The Owner investigated the issue and received a quote from Crossland Group on 18 October 2021 for comprehensive roof repairs in the sum of £37,249.45 (inclusive of VAT). It appears that the quote related to repairing the roof over the entire block within which flat 21 was situated (the Property is made up of several distinct, but inter-connected blocks).*
> *18. Deeming the cost to be too high at that point in time, and apparently mindful of the requirement to consult with leaseholders before undertaking significant works, the Owner sought an alternative quote for temporary repairs. Crossland Group reverted on 2 November 2021 with a quote of £1,650 (inc. VAT), which was accepted. Shortly afterwards, on 7 December 2021, the Owner commenced a formal consultation by writing to leaseholders to seek their views about undertaking "*Roof repairs or recovering as necessary to ensure that the roof is watertight*". This was stated to be a notice of intention in accordance with section 20 of the Act. No leaseholders made any observations.*
> *19. The temporary repair rapidly failed and the leaseholder of flat 21 reported it afresh. The Owner did not progress further repairs, nor did it undertake any further consultation. In June 2022, the leaseholder approached the Property Redress Scheme (the "PRS") to assist her in having the leak repaired. Her case was accepted and, on 10 August 2022, the Owner acted on the complaint by seeking a quote for repairs from a new contractor, GWI Roofing Ltd. Within a week the contractor had attended the Property and estimated costs of £6,500 for a temporary repair or £19,250 for a full repair (both excluding VAT). By 6 September 2022, a firm quote of £7,200 (excluding VAT) was provided with work expected to begin on 14 September 2022. It was clear to the Tribunal that the*

"temporary" repairs this time in fact amounted to a complete recovering of the section of roof above flat 21.

20. Work in fact began on 13 September 2022, and damage to the fascia and rafters was identified, notably rot. This was stated to be a structural issue and due both to poor design and to inadequate installation. Photos were provided. Additional repairs were recommended for an approximate sum of £2,000. The additional works were agreed, and in fact amounted to a little less – £1,810 (excluding VAT). The total cost of the works was £10,812 (inclusive of VAT).

21. The Owner submitted that the delay to commissioning the roof repairs was due to difficulties in sourcing competent contractors. The Tribunal had no objective evidence to support that statement. It noted that Crossland Group had been engaged with apparently little difficulty in late-2021 and that within around a month of contacting GWI Roofing Ltd in August 2022, work had begun. The Tribunal found on the balance of probabilities that the Owner may have experienced some difficulties in identifying reputable contractors, but the main reason it failed to commission the works sooner was simply that it did not prioritise it. As soon as the issue was raised more formally via the PRS, the matter was progressed with more urgency to a rapid resolution.

22. As to whether the delay resulted in additional damage, the Tribunal found that this was likely, but not to such a degree as to have had an impact on the cost of the works. Both Crossland Group and GWI Roofing Ltd found the roof to be in a poor state of repair. The significant damage suffered to the rafters and fascia through rot was unlikely to have resulted solely from the delay in undertaking the works and had likely begun well beforehand. Crucially, the Tribunal found that GWI Roofing Ltd would likely have recommended their replacement in any event due to the design and installation flaws it identified. It was unlikely to have guaranteed the work otherwise. In light of the relatively limited additional cost involved, there is no reason to suspect that the Owner would not have accepted that recommendation. As to internal redecoration, the Tribunal found that it was required in any event and the limited additional surface area needing attention would have made no difference to the cost".

7. Paragraph 36 of the Previous Decision recorded as follows:

"*36. As to the roof repairs, the Tribunal sympathised with the Applicants. It determined that the Owner delayed fixing the leak above flat 21 with no good reason. It could and should have addressed the matter sooner, despite financial pressures. Money was available in the reserve fund. Initially seeking a temporary repair and consulting on a longer-term solution was reasonable in late-2021, but speedier action should have been taken when that repair failed. However, crucially, the months-long delay had no discernible impact on the cost of repairs. They were required in any event and their cost and quality appear reasonable. Accordingly, the Tribunal determined the costs were reasonably incurred. Whether those costs are payable in full will be addressed below*".

Law

8. 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...

9. 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.

10. Part 2 of Schedule 4 outlines the specific consultation requirements and is reproduced in an appendix to this decision.

11. 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 tenants 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).

12. 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

13. The roof repair works were required in order to fix a leak in the Property's roof. As found previously, they should have been conducted more swiftly, but ultimately the standard and cost of the repair were reasonable.

14. The Applicant submits that part of the repairs could not have been foreseen, and were agreed to rapidly, without consultation, in order to minimise the cost and disruption of having the contractors return to the Property at a later date. That may be so and a reasonable decision, but it does not address the failure to consult properly prior to commencing the initial work. There was plainly time

to do so between December 2021, when the initial "notice of intention" to conduct roof repair works was given to tenants, and September 2022, when the works were ultimately commissioned. Proper engagement with the consultation process from December 2021, notably by deciding on the precise extent of the works and promptly seeking estimates and observations, may well have resulted in the works being completed earlier.

15. Be that as it may, the Owner had sought at least two estimates for the roof repairs prior to entering into contract, notably from Crossland Group in late 2021 and from GWI Roofing Ltd in mid-2022. Of the options presented (full replacement in the sum of £37,249.45 from Crossland Group or £23,100 (being £19,250 + VAT) from GWI Roofing Ltd, or a temporary repair from the latter in the estimated sum of £8,640), the cheapest was pursued. Save that the Owner did not seek observations on the estimates from the tenants, and (arguably) could have been more precise about the description of the work to be done in its notice of intention, the Owner complied substantively with the consultation requirements.

16. The Applicant submits that the tenants have not suffered any prejudice from the failure to consult.

17. The tenants 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 repairs to have been sought (which was done) and presented to the tenants (not done), and an explanation to be given to the tenants if the cheapest estimate was not pursued (not relevant in this case). Accordingly, the Owner did much of what was required, including raising the matter generally for consultation.

18. The Tribunal noted from her submission that Ms Oram appears to have commissioned some roof repairs from a third company – Myhill and Brads Roofing – in or around March 2023, over flat 31 in the sum of £270. This appears to be related to localised damage suffered in high winds that was first reported to the Owner in September 2022. Whether this damage above flat 31 was in any way related to the repairs completed by GWI Roofing Ltd in September 2022 above flat 21 is not clear and has not been explored in the context of either this application or the Previous Decision. However, it appears unlikely as, according to the plan the Tribunal has seen, the two flats are neither adjacent nor close by.

19. Given Ms Oram had identified her own building contractor to attend to these roof repairs, it is possible that she might have had observations to make in relation to the estimates received by the Owner for the repairs conducted in September 2022. However, the Tribunal also noted that Myhill and Brads Roofing had not been nominated by Ms Oram at the time the notice of intention to conduct the roof repairs was provided by the Owner in December 2021. Additionally, it is not clear what damage was suffered above flat 31, nor exactly what works Myhill and Brads Roofing undertook, nor whether they were satisfactory. The Tribunal found it more likely that it is the delay suffered in having the repairs to flat 21 undertaken that has since prompted Ms Oram to "take matters into her own hands", and that neither she nor any other tenant would have made any observations in relation to the estimates received by the Owner. Accordingly, no obvious prejudice has been suffered by the Owner's failure to seek observations on the estimates received. It would therefore be reasonable to dispense with the remaining consultation requirements.

20. It could be argued that decisions around the award of contracts may be relevant to any challenge to, or assessment of, the reasonableness of any service charge. Such information therefore could be of

some importance to the tenants and potentially prejudicial to them were they not to have access to it. However, the Tribunal has already determined that the cost of the roof repairs was reasonably incurred and did so taking account of the estimates received by the Owner. No prejudice therefore arises in this case. It appears from his submission that Mr Rowlands has not received a copy of the Crossland Group estimate or the roof survey report. As he should have received them within the Tribunal correspondence, copies of both will be sent to him alongside this decision.

21. As to the other points raised by Mr Rowlands in his objection, the thrust is that he is dissatisfied with the Owner's and/or its managing agent's performance of their obligations under the lease. The Tribunal's powers are limited and confined to determining the applications before it. In its Previous Decision, the Tribunal found the Owner had delayed undertaking the roof repairs without good reason, but that ultimately the cost of the repair was reasonably incurred and the work was conducted to a reasonable standard. In relation to the present application, it is reasonable to dispense with consultation in relation to those works for the reasons given above. In any event, in practice, the additional sums the Owner will be able to seek through service charges are likely to be limited as the cost to any individual tenant of the roof repairs is unlikely to greatly exceed £250.

22. As to Mr Rowlands' concern about the initial temporary repair conducted by Crossland Group, that is not the subject of this application, which concerns the repairs undertaken by GWI Roofing Ltd in September 2022. In any event, the Tribunal understood that the initial repair was not backed up by any warranty.

23. There is no dispute that the notice of intention to conduct the roof repairs was provided prior to a detailed survey being undertaken. Presumably for this reason, the notice did not indicate that a full replacement was being considered, instead it stated "*Roof repairs or recovering as necessary to ensure that the roof is watertight*". This appeared to be due to the issue encountered with flat 21. It may well have been the case at that point that a full roof replacement was not envisaged.

24. As to incorrect service of documents, the Tribunal invites the Owner to take note of Mr Rowlands' concern. However, it is of little relevance to this application for dispensation from consultation.

Dated this 26th day of November 2024

M. Hunt
Chairman

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.