

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES) LANDLORD AND TENANT ACT 1985 s.20ZA

TRIBUNAL

Rhys Taylor
Roger Baynham MRICS

CHAIRMAN

Rhys Taylor

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 dated 20 August 2012.

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| <u>Name of Property:</u> | Byron Court, Shakespere Drive, Llantwit Major, CF61 1AW ("the property") |
| <u>Ref:</u> | Byron Court |
| <u>Applicant :</u> | Wales and West Housing Association Limited |
| <u>Respondents:</u> | All 19 leaseholders named in the schedule to the application dated 20 August 2012. |

ORDER

1. The application to dispense with consultation requirements is granted.

21 September 2012

A handwritten signature in black ink, appearing to read "Rhyd Taylor". The signature is written in a cursive, slightly slanted style.

Procedural chairman

REASONS

1. This is an application dated 20 August 2012 pursuant to s.20ZA of the Landlord and Tenant Act 1985, in respect of works which are required to be carried out to the property, namely the complete reinstallation of a lift, the previous one having reached the end of its useful working life.
2. The property comprises 19 leasehold retirement residential units. They are held on 99 year leases which were granted in 1985.
3. The leases contain the usual covenants obliging the landlord to undertake works of maintenance and repair which in turn can be recovered via a variable service charge clause from the leaseholders.
4. On the 10 August 2012 the Applicant wrote to all Respondents indicating that the lift at the property was beyond repair and that there would have to be a replacement lift. The letter indicated the Applicant's intention to apply to the leasehold valuation tribunal for required consultation requirements to be dispensed with, as the cost was in excess of £250 per Respondent, with a total cost of £26,563.30 + VAT. The letter invited observations and none were forthcoming.
5. The tribunal attended for a hearing on the 21 September 2012 which was convened in the large hall area of the property. Present from the Applicant were, Mr Wayne Smith (the Asset Manager), Anne Warrell (Home Ownership Officer), Hazel Gray (Home Ownership Officer) and Dorrett Evans (lawyer on behalf of the Applicant). Present from the Respondents were 9 residents, namely, Mr & Mrs Munn, Mrs Cutter, Mrs Baillie, Mrs Ashworth, Mrs Long, Mrs Molloy, Mrs Bowring, Mrs Johns and Mrs Davidge.
6. At the hearing the tribunal asked why we had only been given one quote for the works, which was from ThyssenKrupp. The Applicant indicated that there had been two others quotes which were produced. The first was a quote for £28,500 + VAT from Schindler. We were told that this company had a 16 week lag in ordering the relevant parts. The second was a quote for £17,550 + VAT from Kone. We were told that whilst this quote was cheaper, it omitted to

include an important and expensive component, making ThyssenKrupp their favoured bidder. It should be noted that the Applicant has a pre-existing relationship with ThyssenKrupp for other maintenance issues.

7. By s.20ZA the tribunal may dispense with the consultation requirements set out in the regulations if it is reasonable to do so. The recent Court of Appeal decision in Daejan Investments Ltd v Benson [2011] EWCA Civ 38 confirmed earlier authority that the tribunal must consider “of the first importance” [72] whether significant prejudice to the leaseholders will be caused by the granting of dispensation. At paragraph [63] the Court of Appeal refers to, “...some examples of when dispensation might be granted ... (i) the need to undertake emergency works; (ii) the availability, realistically, of only a single specialist contractor...”
8. At this short and good humoured hearing we were confronted by a group of residents who expressed no dissatisfaction with the steps taken by the Applicant. We have already noted the letter of 10 August has not elicited any unfavourable comment. We are also bound to observe the age of the Respondents, the fact that many in the room had walking sticks and aids. We are satisfied entirely that it is of the utmost urgency for the works to be carried out to install a new lift. Accordingly, we have no hesitation in granting dispensation.
9. It should be noted that all we are doing is dispensing with the Applicant’s requirement to consult under the regulations. We are not asked on this occasion to make any observations as to the reasonableness of the costs of the works, which may be a matter which a leaseholder could pursue under s.20 Landlord and Tenant Act 1985. We are also not asked to make any determination as to the recoverability of the service charge under the terms of the lease, we are merely dispensing with the consultation requirement.
10. At the conclusion of the hearing Anne Warrell kindly indicated that she would distribute this decision to all 19 leaseholders.

21 September 2012

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Procedural chairman

