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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

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| Reference: | LVT/0031/09/19 |
| In the Matter of: | Ilston Way, Swansea, SA3 5LG |
| And in the Matter of: | An application under the Landlord and Tenant Act 1985 - Section 20ZA |
| APPLICANT: | The Council of the City and County of Swansea. |
| RESPONDENT: | Leaseholders of Ilston Way and Wimblewood, Swansea |
| TRIBUNAL: | Trefor Lloyd (Legal Chair) |

## DECISION

**The Tribunal grants the Applicant's application under Section 20ZA of the Landlord and Tenant Act 1985 and dispenses with the requirements for the Applicant to comply, or to have complied with the relevant consultation requirements under the Act and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 in relation to the material qualifying works namely re-roofing pitch roof, extending pitch roof tiling, renewing fascias, barge boards and soffits, renew rainwater goods, remove existing cavity wall insulation wall tie replacements, external insulated cladding and render system, renew plinths, renew concrete sills, renew staircases to two storey flats, renew lintels, external works, electrical (extractor fans) in respect of numbers 2, 4, 16, 18, 20, 28, 36, 38, 40, 44, 46, 48, 60 Ilston Way and number 4 Wimblewood Close, West Cross, Swansea, SA3 5LG.**

**The Tribunal is satisfied that it is reasonable to dispense with those consultation requirements on the facts of this case.**

## Background

1. The matter relates to qualifying works as referred to above in respect of flats forming part of Ilston Way, West Cross, Swansea, SA3 5LG.

2. By way of an application dated the 10th September 2019 received by the Tribunal on the 23rd September 2019, the Applicant seeks dispensation from the consultation requirements for qualifying works under Section 20 of the Landlord and Tenant Act 1985 ("the Act"). They are described in the application as:

(1) Re-roof pitch.

(2) Extending pitch roof tiling.

(3) Renew fascias, barge boards and soffits.

(4) Renew rainwater goods.

(5) Move existing cavity wall insulation and wall tie replacement.

(6) External insulation cladding and render system.

(7) Renew plinths.

(8) Renew concrete sills.

(9) Renew staircases to the two storey flats.

(10) Renew lintels.

(11) External works.

(12) Electrical works (extractor fans).

3. The application form and appendices further indicate and confirm that an initial Section 20 consultation exercise was undertaken quite properly as a result of which the contractor Jistcourt (South Wales) Ltd ("Jistcourt") were appointed following no representation being received from the Leaseholders. Work commenced on the 2nd January 2019 but unfortunately Jistcourt ceased working on the site on or about the 19th June 2019 and an Administration Order was served on the Applicant on the 27th June 2019. As at that date the works were not complete and Jistcourt had gone into voluntary administration.

4. Following discussions with the Appointed Administrator it was agreed that the Applicant would enter into negotiations with the contractor that submitted the next lower tender at the initial tendering exercise stage (that formed part of the initial consultation process). Accordingly, negotiations with ASW Property Services Ltd commenced on the 24th July 2019 and an in principle agreement has been reached that the work could be undertaken in accordance with the rates contained within its tender bid. The application states that the contracts were to be signed shortly (application dated the 10th September 2019) and that it was anticipated the work would recommence on Monday the 30th September 2019.

5. The application further confirms that in the Applicant's view the change of contractor could be considered as a material change which requires a new Section 20 consultation hence the application being made.

6. The Applicant's case is that another Section 20 consultation would be prejudicial to the Leaseholders as the work to their properties is not complete leaving them to vulnerable to property damage. The same is even after some temporary works have been undertaken to ensure as far as possible that the properties remain weatherproof.

7. The Applicant concludes its application by stating that there is no prejudice to the Leaseholders by dispensing with the need for a further consultation because:

   (1) The Leaseholders' contribution will not change and remain the same as set out in the earlier consultation letter dated the 14th December 2018.

   (2) The estimates contained within the letter of the 25th October 2018 were not challenged by any of the Leaseholders during the previous Section 20 consultation.

   (3) The qualifying works are unchanged from the letter of the 1st August 2018 and were not opposed by the Leaseholders during the Section 20 consultation.

8. Whilst there may be a need for remedial works for damage arising during the works undertaken by Jistcourt and/or the intervening period the works if any are considered to be minimal.

9. Finally, the Applicant confirms that any additional costs that arise by virtue of the circumstances of a change in contractor will be met in full by the Applicant. As a result there will be no additional charge to the Leaseholders from the initial Section 20 consultation which as referred to above was unopposed.

**The Law**

10. The relevant primary legislation is to be found in sections 20 and 20ZA of the Act. Section 20ZA(1) to 20ZA(4) provides as follows:

20ZA (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, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement -

(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

11. Section 20(1) provides that, where the section applies to any qualifying works the relevant contribution of tenants is limited (in practice to £250) in accordance with section 20, and the material accompanying regulations, unless the consultation requirements have either (a) been complied with in relation to the works or (b) dispensed with in relation to the works by a Leasehold Valuation Tribunal.

12. The elements to the consultation required are prescribed by the Service Charges (Consultation Requirements) (Wales) Regulations 2004 ("the Regulations") and the Act but in broad terms, notice would be given to the tenants of the works and proposed costs, responses sought from the tenants within 30 days, the landlord would have regard to any responses, obtain estimates including from contractors nominated by the tenants, send out a second notice with details of at least two estimates and a summary of observations made to the landlord together with details of a second 30 day period for further observations to which the landlord must have regard before entering into the contract. This is of necessity a time consuming process.

13. The leading case on the question of whether a Leasehold Valuation Tribunal should grant a section 20(1)(b) dispensation under section 20ZA of the Act is the Supreme Court decision in **Daejan Investments Ltd. v. Benson [2013] 1 WLR 854**. The Court said that the purpose of the consultation requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate and, as such, the issue on which the tribunal should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the consultation requirements (Lord Neuberger in the leading judgment at paragraph 44). The dispensing jurisdiction is not a punitive or exemplary exercise. The consultation requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above (paragraph 46). The importance of real prejudice to the tenants flowing from the landlord's breach of the consultation requirements is the main, indeed normally the sole, question for the tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) (paragraph 50). The tribunal has power to grant a dispensation on such terms as it thinks fit provided that any such terms are appropriate in their nature and their effect (paragraph 54).

14. It is for the tenants to identify some relevant prejudice that they would or might have suffered (paragraph 67) and further that once the tenants have shown a

credible case for prejudice it is for the landlord then to rebut it (paragraph 68). It is also for the tenants to identify what it is they would have said if the consultation process had been implemented.

## Decision

15. The Tribunal must consider the question of the extent if any to which to the tenants are prejudiced by the failure of the landlord to comply with the applicable consultation requirements. All the Leaseholders were invited to comment and also if they so desired to become respondents. None of the Leaseholders elected to become respondents and there have been no representations from them in relation to this application.

16. In relation to the Lease a specimen copy has been provided by the Applicant. Clause 5(2)(a) refers to the service charge and makes it clear that the repairs that had to be undertaken are the subject matter of such a charge.

17. Bearing in mind there have been no representations from any of the Leaseholders the Tribunal accepts the un-contradicted evidence of the Applicant. Further, bearing in mind all that is occurring is a change of contractor with the Leaseholders only being subjected to the same cost consequences as in the case of the prior consultation which followed the appropriate procedure and did not result in any representations being made, the Tribunal is satisfied that there is no prejudice to the Leaseholders as a result of dispensing with the requirements for consultation in the circumstances.

**Dated this 29th day of November 2019**

**Chairman**