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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference:LVT/0031/11/20

In the Matter of Premises at 81 Ninian Road, Roath Park, Cardiff, CF23 5EN

And in the matter of an Application under Section 20ZA of the Landlord and Tenant Act 1985

Applicant: Seraph Property Management

**Respondents: (1) Mr Anthony Meacham (Flat 1)
(2) Ms Sarah Toby (Flat 2)
(3) Mr and Mrs D Engledew (Flat 3)**

Type of Application: To dispense with the requirement to consult lessees concerning qualify works.

**Tribunal: Colin Green (Chairman)
John Singleton MRICS (Valuer Member)
Juliet Playfair (Lay Member)**

Date of determination: 21 April 2021

DECISION

- (1) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the tribunal grants dispensation from the consultation requirements of paragraphs 4, 5 and 6 of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (see Appendix) for the purpose of the works the subject of the offer letter from Western Power Distribution dated 20 July 2020.**
- (2) In granting dispensation the tribunal makes no determination as to whether any service charge costs are payable or reasonable.**

REASONS FOR DECISION

Background

1. 81 Ninian Road consists of flats on the ground, first and second floors, numbered 1, 2 and 3, respectively. Each of the flats has been let by Ninian Road Limited ("the Company") for a term of 999 years from and including 1 January 1989 under leases in substantially the same terms. A copy of the lease of flat 1 dated 23 February 2010 ("the Lease") has been provided to the tribunal. Paragraph 1 of the Fifth Schedule provides that after completion of leases of all the flats, control of the Company will be transferred to the owner of each flat so that they will each hold an equal number of shares. At some point the Company changed its name to "81 Ninian Road Management Company Limited" and the three Respondents to the present application are the current flat owners who each presumably have an equal shareholding in the landlord Company.

The Service Charge

2. As regards the relevant service charge provisions in the Lease, clause 2(d) is a tenant's covenant which provides:

"to pay the Landlord without deduction one third of the cost of insurance in accordance with the covenants by the Landlord contained in clause 3(b) hereof and to contribute to the Landlord and keep the Landlord indemnified from and against one third of all the costs and expenses incurred by the Landlord in carrying out the Landlord's obligations under clause 3(a) hereof."

3. Clause 3(a) is the landlord's covenant:

"Subject to contribution and payment by the Tenant as hereinbefore provided to keep the boundary walls outside main walls (but not the windows of the Demised Premises) party walls internal load bearing walls joists roof foundations external [sic] sewers drains and gutters of the Building in good and tenantable repair and condition in every third year to paint and decorate the exterior stone and woodwork of the Building in the same colour as may be approved by the Tenant."

Clause 3(b) is a covenant by the landlord to insure the Building.

4. Clause 2(b) of the Lease is a covenant by the tenant,

"to pay a monthly service charge payment of £85.00 per month, which is to include the insurance contribution."

5. Therefore, each tenant's service charge obligation is to pay one-third of the expenditure incurred by the Company in discharge of its obligations to repair and

insure the Building under clauses 3(a) and (b), with a payment on account of £85.00 per month.

Consultation

6. Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 contain provisions that require a consultation process to be followed in respect of, amongst other things, “qualifying works”, that is, works in respect of which each tenant will have to contribute more than £250.00 by way of service charge. In a case such as the present the details concerning, and timetable for, the relevant consultation process in respect of such works is contained in Part 2 of Schedule 4 to the 2004 Regulations, which include a provision that after service of the initial notice of intention the landlord must obtain at least two quotes for the work, irrespective of whether the tenants have nominated contractors. Failure to observe the consultation requirements will limit each tenant’s liability to contribute to the cost of the qualifying works to the sum of £250.00, but under section 20ZA of the 1985 Act the tribunal is empowered to dispense with all or any of the consultation requirements.

The Application

7. The present application has been made by Seraph Property Management, which is the Company’s managing agent, seeking dispensation under section 20ZA of the consultation requirements that apply to the works mentioned below. Usually, one would expect the application to be made by the landlord itself, albeit that a managing agent might have conduct of the matter, but the tribunal does not consider that this invalidates the application. It is clear that Seraph is acting on behalf of the Company and there is no express limitation in section 20ZA that prevents an agent from making an application for dispensation in that capacity.
8. The grounds of the application are set out in paragraphs 10 and 13 of the application form, completed by Liam Nolan of Seraph:

“The communal electric supply is currently running off the middle floor flats supply and we have been advised by Western Power that there is a risk of overloading. This could potentially result in fire.

The works are to install an additional electric supply to the building. This will be costing more than £250 per leaseholder, however as Western Power are the only company to carry out this work, I’m unable to obtain a second quote for the works.

I have served the Section 20 notice of intention however I’m not able to proceed to the next stage without a second quote for the works.”

Dispensation is sought,

“As I’m unable to correctly follow the second and third processes of section correctly under the circumstances.

9. A copy of an offer letter dated 20 July 2020 from Western Power Distribution has been supplied, which contains no description of the works other than that they are electricity connection works, made up as follows:

Contestable works	£1,821.13
Non-contestable works	£134.00
Vat at 5%	£97.76
Total	£2,052.89

10. For the purpose of determining the application, the tribunal will proceed on the basis, without deciding the issue, that the above works fall within the scope of clause 3(a) of the Lease and therefore that the cost of the works is recoverable by the Company from the Respondent tenants by way of service charge. On that footing, each would be liable to contribute more than £250.00 and the consultation requirements are engaged.
11. Although Mr. Nolan supplied a statement dated 2 January 2021, served pursuant to paragraph 1 of the directions made by the tribunal on 16 December 2020, no further evidence or submissions have been provided by him. The Respondent tenants have been served with the application, directions, and Mr. Nolan's statement, and paragraph 2 of the directions gave them permission to file a statement in response. The tribunal has received no communication from any of the Respondents and therefore, since there had been no request for an oral hearing under paragraph 3 of the directions, on 21 April 2021 the panel members met by way of video conferencing for the purpose of determining the application on the papers. The tribunal reviewed matters afresh and was satisfied that this is a case suitable for determination without a hearing.

Determination

12. If Mr. Nolan's assertion is correct and no-one other than Western Power can carry out the electrical supply work, it would clearly be impossible for two or more quotes to be obtained and dispensation would have to be granted in relation to that requirement. The tribunal is sceptical that this is the case, however. The work is divided into the categories contestable and non-contestable with the bulk of the costs being in the former category. Non-contestable works are works that can only be carried out by Western Power, the host distribution network operator, but contestable works can be carried out by other suitable contractors. The tribunal considers it likely that other quotes for the whole of the work could be obtained with the contractor making arrangements for Western Power to carry out the non-contestable part, that cost being built into the quote, and that Western Power would not have a monopoly on works part of which involved non-contestable items.
13. On the basis that other estimates for the relevant work could in principle be obtained, different considerations apply. The leading decision concerning

dispensation is that of the Supreme Court in *Daejan Investments v. Benson* [2013] UKSC 14. According to the guidelines in that case concerning how to approach the issue of dispensation, in the first instance it is for the tenants to identify how they will be prejudiced by a failure to follow the consultation requirements and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate. As noted above however, there has been no response from any of the tenants, so no case of prejudice has been raised. In addition, although strictly speaking the Respondents' silence does not amount to consent, the absence of dissent or any objection to the application is something to which the tribunal should give suitable weight, as well as the apparent urgency of the work due to fire risk. In those circumstances, the tribunal is minded to grant dispensation.

Conclusion

14. Accordingly, irrespective of whether anyone other than Western Power could carry out the work, the tribunal considers it appropriate to dispense with the consultation provisions so far as the requirement of providing at least two quotes is concerned. With only one quote the provisions of paragraphs 4 to 6 of Part 2 of Schedule 4 to the 2004 Regulations (see Appendix) would have no meaningful application, and the dispensation has been expressed by reference to those paragraphs.
15. In granting dispensation, and as mentioned in paragraph 10 above, the tribunal is making no determination as to whether any service charge costs are payable or reasonable.

Dated this 4th day of May 2021.

Colin Green
(Chairman)

APPENDIX
The Service Charges (Consultation Requirements) (Wales) Regulations 2004
SCHEDULE 4
CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER
QUALIFYING LONG TERM AGREEMENT OR AGREEMENTS TO WHICH
REGULATION 7(3) APPLIES
PART 2
CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC
NOTICE IS NOT REQUIRED

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.