

**Y TRIBIWNLYS EIDDO PRESWYL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL**

**Reference: LVT/0034/12/21**

**In the Matter of Premises at 1-16 Tuttle Street Brewery, Tuttle Street, Wrexham, LL13 7AA**

**In the matter of an Application under Section 20ZA of the Landlord and Tenant Act 1985**

**APPLICANT:** Tuttle Street Brewery Management Limited

**RESPONDENT:** Karam Roberts (Apartment 6)

**Type of Application:** To dispense with the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.

**Tribunal:** Mrs Siân Westby (Chairperson)  
Mr John Singleton MRICS (Valuer Member)  
Mrs Juliet Playfair (Lay Member)

**Date of determination:** 25 April 2022

**DECISION**

- (1) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the Tribunal grants dispensation from the consultation requirements of paragraphs 1, 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 required to the roof of the property and being the subject of the notice of intention dated 25 October 2021.**
- (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. 1-16 Tuttle Street Brewery, Tuttle Street, Wrexham ("the Property"), the subject matter of this application, consists of sixteen apartments. Each of the apartments has been let by Storevert Limited, the landlord of the Property ("the Landlord), for a term of 999 years from and including 1 January 2005 under leases in substantially the same terms. A copy of the lease of apartment 3 dated 25 August 2006 ("the Lease") has been provided to the Tribunal and the Applicant has confirmed that the leases for all sixteen apartments are in similar form.
2. The Lease is made between the Landlord, the lessee of the apartment and Tuttle Street Brewery Management Co Limited ("the Company"). Referred to in the Lease is a Lease of Common Parts relating to the Property that is dated 13 May 2005 and made between (1) the Landlord and (2) the Company ("the Common Parts Lease"). The Tribunal has been provided with a copy of the Common Parts Lease.
3. Also referred to in the Lease, and in the Common Parts Lease, is a deed of covenant made between the Company and the lessee relating to the maintenance of the common parts of the Property. Clause 1.14 of the Common Parts Lease confirms that the deed of covenant for each of the lessees is in the same terms (as far as circumstances permit) as those contained in the specimen deed set out in the Sixth Schedule thereto. An exemplar copy of a deed of covenant dated 21 April 2006 in relation to Apartment 1 has been provided to the Tribunal ("the Deed of Covenant").
4. Pursuant to clause 3.51 of the Lease, the lessees covenanted with the Landlord that they would *'apply to the Company in accordance with its articles of association to become a member of the Company'* and pursuant to clause 3.53 of the Lease *'not while still a Tenant under [the Lease] to withdraw from membership of the Company nor dispose or purport to dispose of any of the rights attaching to membership of the Company'*. Accordingly, the lessees will all be members of the Company and the Tribunal understands that three of the lessees are directors of the Company.

### The Service Charge

5. With regard to the relevant service charge provisions, these are to be found in the Deed of Covenant. Pursuant to clause 3.1 of the Deed of Covenant the lessees covenanted with the Company:  
*'to pay to the Company in respect of each year of the term of the Apartment Lease the Tenant's proportion of the Service Charge calculated apportioned and payable in accordance with the Schedule either before or after formal demand'*.
6. The Service Charge is defined in the Schedule to the Deed of Covenant as meaning:  
*'the total in each Year of the Company's Fund A Expenses and the Company's Fund B expenses'*.
7. Paragraph 1.2 of the Schedule to the Deed of Covenant confirms that the Company's Fund A Expenses means  
*'the total in each Year of all costs expenses overheads payments charges loss and outgoing suffered or incurred by the Company in respect of:-'*

There is then a list of fifteen items which include:

(ii) *gardening and maintenance of the external/outside areas of the Common Parts and the Designated Parking Spaces;*

(x) *Repairs*

*... and any and all other costs or items of expenditure incurred by the Company... in pursuance of its obligations under this Deed and/or the Common Parts Lease...'*

8. The 'Common Parts' is defined at clause 1.8 of the Deed of Covenant as being:  
*'those Premises demised to the Company by the Common Parts Lease and which are defined in the Common Parts Lease as 'the Premises' in Schedule 1 to that lease'.*
9. Paragraph 3 of Schedule 1 to the Common Parts Lease confirms that the Premises are:  
*'all those premises... comprising the structural frame of the Building together with all chimney flues external walls party walls floors foundations structural supports... roof of the Building and the door entry system...'* [Tribunal emphasis added].
10. At clause 2.1 of the Deed of Covenant, the Company covenanted with the lessees to  
*'maintain repair redecorate renew and to keep in good and substantial repair at all times:-*
  - 2.1.1 *the roof structure boundary and outside walls foundations fences railings gates gutters and rainwater pipes of the Building'.*
11. Paragraph 3 of the Schedule to the Deed of Covenant confirms that the lessee will pay to the Company the Apartment's Proportion of the Service Charge which, pursuant to paragraph 1.6 is the proportion of the Service Charge allocated to the Premises and payable by the Tenant as calculated in accordance with paragraphs 4.1 and 4.2 of the Schedule.
12. Paragraphs 4.1 and 4.2 of the Schedule states that the Company's Fund A expenses *'shall be divided into 573 equal shares and that the lessees shall pay 28.5922 shares of the Company's Fund A Expenses'.*
13. Therefore, each lessee's service charge obligation is to pay a proportionate share of the Company's Fund A Expenses incurred by the Company in discharge of its obligations under clause 2.1 of the Deed of Covenant.
14. There is also reference in the Deed of Covenant to the Company's Fund B expenses and paragraph 4.2 of the Schedule to the Deed of Covenant provides that the lessees shall pay nothing in respect of such expenses.

## **Consultation**

15. Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 ("the 2004 Regulations") contain provisions that require a consultation process to be followed in respect of, amongst other things, "qualifying works" which are works in respect of which each lessee will have to contribute more than £250 by way of service charge.

16. In a case such as this one before the Tribunal, the details and timetable for the relevant consultation process in respect of such works is contained in Part 2 of Schedule 4 to the 2004 Regulations. The 2004 Regulations include provisions that:
- i. the initial notice of intention must give the tenants 30 days, beginning with the date of the notice, to provide observations in relation to the proposed works and propose the name of a person, from whom the landlord should try to obtain an estimate for the carrying out of the proposed works;
  - ii. 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;
  - iii. once estimates have been obtained, to make the estimates available to the lessees for inspection and, within 30 days, have regard to any observations made by the lessees in relation to the estimates.

Failure to observe the consultation requirements will limit each lessee's liability to contribute to the costs of the qualifying works to the sum of £250. However, pursuant to section 20ZA of the 1985 Act, the Tribunal is empowered to dispense with any or all of the consultation requirements.

### **The Application**

17. The application before the Tribunal has been made by the Company and seeks dispensation under section 20ZA of the 1985 Act of the consultation requirements that apply to the works mentioned below.
18. The grounds of the application are set out in paragraphs 10 and 13 of the application form completed by Mr Kevin O'Reilly, the secretary of the Company and also a Director of the managing agent for the Company:
- 'Emergency works need to be executed to prevent severe leaks and further deterioration to the building. The welfare of the residents is being compromised and there are health and safety concerns because of the poor condition of the roof.'*
- Dispensation is sought due to the perceived urgency of need for the works to be undertaken as the failure of the *'balcony floor covering and roof structure'* has *'resulted in severe leaks into apartments 1 and 8'*.
19. Following directions set down by the Tribunal, the Company provided a witness statement of Mr Kevin O'Reilly with an accompanying exhibit in support of its application.
20. Mr O'Reilly states that, following reports of a leak into apartments 1 and 8, the Company found the surface of the flat roof of the balcony to have failed and, accordingly, required a full replacement. The Company then appointed a firm of surveyors which advised that a temporary roof covering and scaffolding should be erected to mitigate further water ingress and damage to the Property.
21. Mr O'Reilly also states that an insurance claim had been made in respect of the damage caused to apartments 1 and 8 and that the insurance company had required confirmation that steps were being undertaken to mitigate further damage to the Property. On that basis, the directors of the Company instructed the managing agent, Matthews of Chester, to obtain an estimate for the works required to the roof. Mr O'Reilly states that:

*'it was evident that steps would need to be taken and the work completed as soon as possible. The urgency of the situation meant that the [Company] did not have time to complete the full consultation process'.*

22. 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 2.1 of the Deed of Covenant and therefore that the cost of the works is recoverable by the Company from the lessees by way of service charge via the Company's Fund A Expenses. On that basis, each lessee would be liable to contribute more than £250 and the consultation requirements are engaged.
23. The Tribunal has been provided with the following documents, amongst others:
  - Quote for scaffolding and temporary roof dated 22 September [2021];
  - Notice of Intention from the Managing Agent dated 25 October 2021;
  - Estimate for the roof repairs dated 1 November 2021; and
  - Update letter from the Managing Agent dated 22 November 2021.
24. The notice of intention invited the lessees to provide written observations in relation to the proposed works and provide details of any contractors they would like to be contacted to provide a quotation or tender. The notice was dated 25 October 2021 and states that the consultation period would end on 30 October; however, to allow for postage, the notice stated that the deadline for a response would be 1 November, giving the lessees 5 days (plus one day for postage) to provide their observations and details of any contractors they wished to be contacted. The managing agent did not receive any response to the notice of intention.
25. Mr O'Reilly also confirms that only one quote was obtained for the proposed works and that this quote was accepted once it, and the scope of work, had been validated by the appointed building surveyor.
26. Mr O'Reilly's witness statement was filed with the Tribunal pursuant to paragraph 1 of the directions made by the Tribunal on 20 January 2022. The Respondent lessee has been served with the application, the Tribunal's directions and Mr O'Reilly's statement. Paragraph 2 of the directions gave the Respondent permission to file a statement in response. The Tribunal has received no communication from the Respondent and therefore, since there has been no request for an oral hearing under paragraph 3 of the directions, on 20 April 2022 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**

27. The leading case on dispensation of consultation requirements is *Daejan Investments -v- Benson* [2013] UKSC 14, in which the Supreme Court set down the guidelines for approaching the issue of dispensation. According to those guidelines, the factual burden of identifying some relevant prejudice is on the leaseholders; the onus is on them to establish what steps they would have taken had the breach not happened and in what way they have been prejudiced. It is then for the landlord, or other applicable entity, to rebut those arguments and establish that it is reasonable for dispensation to be granted, on terms if appropriate.

28. As noted above, the Company received no observations or comments in relation to its notice of intention and the Tribunal has received no correspondence or statements from the Respondent in respect of this case, so no case of prejudice has been raised.
29. Although the lessees' silence on the matter cannot necessarily be taken as consent to the notice of intention or a waiver of the Company's breaches of the consultation requirements, the lack of correspondence or any objection to this application is something to which the Tribunal should give appropriate weight, in addition to the need for urgency in respect of the works.
30. The Tribunal are satisfied that it was reasonable in the circumstances, bearing in mind the time of the year and the urgent need to prevent further damage to the Property, to erect the scaffolding and temporary roof structure. The Tribunal are also satisfied that it was reasonable in all the circumstances to reduce the relevant period in the notice of intention dated 25 October 2021 from 30 days to 5 days, plus 1 day to allow for posting. Although the period has been quite severely reduced, it is clear that the nature of the works was urgent. The Tribunal also note that, at that time of the year, to allow the full 30 days would have led to the works being carried out around Christmas which could, of itself, cause further issues in terms of inclement weather and delay. The Tribunal also notes that it is very likely that the cost of the scaffolding and temporary roof structure would have increased significantly if the relevant period had not been shortened as it would have been required for a longer period.
31. The Tribunal is surprised that the Company only obtained one quote for the proposed works. Despite the need for the works to be undertaken urgently, the Tribunal considers that at least one other quote could have been obtained by the Company at the time. However, no prejudice has been raised or established in this regard.

## **Conclusion**

32. For the reasons stated above, the Tribunal considers it appropriate to dispense with the consultation requirements in relation to the requirements that:
- i. the notice of intention provides the lessees with 30 days in which to provide observations in relation to the proposed works and propose the name of a person, from whom the landlord should try to obtain an estimate for the carrying out of the proposed works;
  - ii. 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;
  - iii. once estimates have been obtained, to make the estimates available to the lessees for inspection and, within 30 days, have regard to any observations made by the lessees in relation to the estimates.

As only 5 days was given to the lessees to provide observations and propose alternative contractors, the provisions of paragraph 1 of Part 2 of Schedule 4 to the 2004 Regulations have not been complied with and, with only one quote, the provisions of paragraphs 4 to 6 of Part 2 of Schedule 4 to the 2004 Regulations (see Appendix below) would have no meaningful application. The Tribunal's dispensation has been expressed by reference to those paragraphs.

33. In granting dispensation, the Tribunal is making no determination as to whether any service charge costs are payable or reasonable.

Dated this 27<sup>th</sup> day of April 2022

Siân Westby  
(Chairperson)

## **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.