

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LVT/0018/08/22

Property: Flats 1 – 33
Plas Tirion Court
Russell Road
Rhyl
LL18 3DJ

Applicant: Wales & West Housing Association

Representative: N/A

Respondents: The leaseholders of the Property
Flats 1 - 33

Representative: N/A

Type of Application: Landlord and Tenant Act 1985 - section 20ZA

Tribunal Members: Tribunal Judge J Rostron
J Singleton MRICS
D Morris

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising and ancillary to the renewal of the Property’s fire and smoke alarm system.

REASONS

Background

1. On 5th August 2022 an application was made to the Residential Property Tribunal (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the

Act”) for retrospective dispensation from compliance with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in The Service Charges (Consultation Requirements) (Wales) Regulations 2004 (“the Regulations”).

2. The application relates to Flats 1 – 33 Inclusive, Plas Tirion Court, Russell Road, Rhyl, LL18 3DJ (“the Property”) and was made by Ms Emma Stewart of Wales & West Housing Association (“the Applicant”).
3. The Respondents to the application are the leaseholders of the residential flats within the Property.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concern urgent remedial works to renew fire panels and fire protection system. No detailed specification is provided with the application.
6. On 9th and 13th September 2022, the Tribunal issued directions and amended directions. It informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received and the Tribunal accordingly convened in the absence of the parties to determine the application.
7. No submissions were received from the Respondents.
8. The Tribunal did not inspect the Property because it felt the nature of the application and absence of comments from the Respondents made it unnecessary. It met remotely at 11.00am on 29th November 2022 to consider the evidence before it.

Grounds for the application

9. In the Application Ms Stewart seeks dispensation, retrospectively, from the consultation requirements and submits that: -

“The fire protection should be renewed as a matter of urgency to maintain the safety of the building in an emergency, the works required fall within the category of Qualifying Works

The works consist of renewing the fire panels, heat and smoke detectors in both individual flats (BS5839-6), communal areas (BS5839-1), the communal laundry and stairwells of blocks 1-5, 14-16, and 29-33.

The works were due to commence on Monday 15th August 2022.”

Law

10. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

11. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–

- (a) complied with in relation to the works ... or*
- (b) dispensed with in relation to the works ... by the appropriate tribunal.*

12. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act).

13. Section 20ZA(1) of the Act provides:

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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;

- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Decision and Conclusions

15. The Tribunal must decide whether it is reasonable for the works to have gone ahead without the Applicant first complying with the consultation requirements. Those consultation requirements provide for a degree of transparency and accountability when a landlord decides to undertake qualifying works. The requirements ensure that leaseholders have the opportunity to know about, and to comment on, plans to carry out major works, usually before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
16. Therefore, in order to dispense with the consultation requirements, the Tribunal needs to be provided with a good reason why the works cannot be delayed until the requirements have been complied with. It is for the Tribunal to weigh the balance of prejudice between the need for swift remedial action to ensure that the safe condition of the Property did not deteriorate further and the legitimate interests of the leaseholders in being properly consulted before major works commence or, as in this case, before they are completed. The Tribunal must consider whether this balance favours permitting the works to have been undertaken without consultation, or whether it favours prior consultation in the usual way. The balance is likely to be in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
17. In this case, given the urgent need to renew the fire and smoke detection and emergency call system and the lack of any objection from the residents, the balance is clearly in favour of the Applicant.
18. The contractor chosen to undertake the renewal works was MACP, because they were considered more cost effective than the other tender received from Chubb. The Tribunal noted that the Applicant had contacted leaseholders to explain the urgent need for renewal of the fire and smoke detection and emergency call system. Whilst this falls short of fully meeting the consultation requirements, the Tribunal considered that because of the urgency of the need for renewal of the system dispensation was appropriate.

19. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements. However, none of the parties should take this as an indication that the Tribunal views the amount of the anticipated service charges resulting from the works as likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard.

Dated this 15th day of December 2022

Dr J Rostron

Chairman of Tribunal