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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0003/04/24

In the matter of Premises at 1-60 Watermark, Ferry Road, Cardiff, CF11 0JU

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

APPLICANT: Watermark (Cardiff Bay) Management Company Limited

RESPONDENTS: The leaseholders at 1-60 Watermark, Ferry Road, Cardiff, CF11 0JU

Tribunal: Mr. M Hunt (Chairman)
Mr. D Evans (Surveyor)

Date of decision: 6 August 2024

DECISION

The application is dismissed. No dispensation from the consultation requirements is granted in respect of the works underway at 1-60 Watermark, Ferry Road, Cardiff, CF11 0JU (the "Property"). The Tribunal found that the application was unnecessary as the works are expected to be funded by the National House Building Council, not by the leaseholders through the service charge.

If this position changes and the landlord both intends to seek a contribution from the leaseholders by way of service charge and fails to consult as required, the landlord has permission to apply to the Tribunal to re-instate this application or to make a fresh application for dispensation from the consultation requirements.

The Tribunal makes no findings as to any other issues, including the necessity of or reasonableness of the works and contractor(s) chosen, or of their cost.

REASONS FOR DECISION

The Facts

1. The Applicant manages the Property on behalf of the landlord, Westmark Developments Limited. The Property contains a number of leasehold flats. Although the Tribunal has not been provided with a copy of any lease, it appears that the landlord is responsible for the upkeep and repair of the Property, including the external structure and roof, and that it can charge the costs of repair to its leaseholders through a service charge.

2. The Applicant has become aware of several defects with the Property, notably resulting in water ingress through the atrium and roof, and a problem with the car park concrete slab. The landlord benefits from a National House Building Council ("NHBC") warranty against such defects. The Applicant informed the Tribunal that the NHBC had agreed to fund the required remediation work and that the work had now commenced. Accordingly, the landlord does not anticipate recovering any costs of the remediation work from the leaseholders through the service charge. For this reason, i.e. that the leaseholders are not presently expected to fund the repairs, the Applicant submitted they would not be prejudiced by any failure to consult them in relation to the works.

3. The Applicant states that it has nevertheless made the leaseholders aware of the nature of the remedial works and its engagement with the NHBC in relation to their funding. The Applicant states that some of the works are specialist so only one quote was sought; quotes from a range of companies were sought in relation to less specialist aspects of the repair project.

4. On 31 May 2024, this Tribunal made directions for the preparation of the application for determination and the submission of arguments and evidence. The Applicant filed a witness statement. None of the leaseholders made any submissions or filed evidence.

5. The application was determined on the papers, without a hearing.

The Law

6. If a landlord wishes to charge any leaseholder more than £250 on account of "qualifying works", it must either:
    a. have consulted with leaseholders in accordance with the Service Charges (Consultation Requirements) (Wales) Regulations 2004/684 (the "Regulations") prior to contracting for the works; or
    b. obtain dispensation from consultation from this Tribunal.

    This is the effect of Regulation 6 read alongside s.20 of the Landlord and Tenant Act 1985 (the "Act").

7. S.20ZA of the Act provides as follows (relevant excerpt).

    20ZA Consultation requirements: supplementary

    (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...

8. The Supreme Court addressed the considerations that a Leasehold Valuation Tribunal should take into account in exercising its discretion to dispense with the consultation requirements: *Daejan Investments Limited v Benson and Others* [2013] UKSC 14. In very brief summary, the Supreme Court decided that the Tribunal should focus on the prejudice that the leaseholders might suffer due to the landlord's failure to consult, notably in two respects: whether the works chosen were appropriate, or whether they cost more than would be appropriate (see paragraph 44 of the judgment).

9. Furthermore, the Supreme Court found that the scope of the Tribunal's powers to apply terms to any dispensation is broad, provided of course that any terms imposed are appropriate (see paragraphs 54-55 of the judgment).

The Determination

10. The submissions and evidence provided by the Applicant make clear that the remedial works were required to the Property. No party has suggested otherwise.

11. The works are expected to be funded in full by the NHBC. No leaseholder is expected to have to contribute to the costs of the works. In these circumstances, s.20 of the Landlord and Tenant Act 1985 places no requirement on the landlord to consult with the leaseholders in accordance with the Regulations. Accordingly, there is no good reason for the Applicant to seek dispensation from consultation or for the Tribunal to grant it.

12. Of course, it is plainly reasonable and appropriate for the landlord and/or its management company nevertheless to make the leaseholders aware of the Property's defects and how it proposes to rectify them. The Applicant says that it has done so and the Tribunal makes no criticism of any of the steps taken by the Applicant.

13. The Applicant has not provided any detailed information as to what communications were given to leaseholders or the nature of any limited consultation that took place. Again, this is not a criticism of the Applicant; at this stage, it is unimportant.

14. The Applicant has submitted that no prejudice would be caused by dispensing with consultation. The leaseholders have not alleged any prejudice. However, the question for this Tribunal is whether it is reasonable to dispense with the consultation requirements. In addition to its finding that there is no good reason to grant dispensation as it is not required, the Tribunal finds it would not be reasonable to do so at this stage in any event.

15. The purpose of the Regulations is to ensure leaseholders are informed about proposed works and have the opportunity to make observations about them in advance and the choice of contractor(s). They are after all the parties in occupation and typically responsible for paying for the works.

16. In this case, as far as the Tribunal has been informed, the leaseholders have been told that the works are being paid for entirely by the NHBC. Some leaseholders may still have made observations about the nature and extent of the works and their timing and methodology. It is unimportant whether they did or not. What is important is that, as they were not paying the cost, some leaseholders may have had no interest in engaging with the proposal or preferred not to make any observations so as to give the landlord maximum scope to agree the most advantageous settlement possible with the NHBC. The situation may have been different had the leaseholders known they were expected to contribute to the cost.

17. Were the Tribunal to grant dispensation from consultation at this stage, the leaseholders would have been deprived of the chance to make informed observations about the works in the knowledge they would or might have to pay for them. This has the potential to be prejudicial. For instance, if the landlord's intentions with respect to charging the leaseholders for the works changes due to the NHBC not paying for the entirety of the works as currently planned. Alternatively, if the landlord decides to

take the opportunity to conduct additional works that the NHBC refuses to fund. Dispensation from consultation at this stage would permit the landlord broad discretion to make decisions at the leaseholders' expense without any timely input from them, which is precisely the situation that the Regulations seek to avoid. Of course, the reasonableness of any costs incurred is capable of scrutiny in any challenge to a service charge, but that would be the case regardless of consultation. The Regulations provide for leaseholders to make observations at the most opportune time, which is prior to costs being incurred in the first place.

18. The reasonableness of dispensation and any potential prejudice that would cause to leaseholders is best evaluated if dispensation from consultation ever becomes genuinely required. That is also the best time to determine any conditions to such dispensation.

19. Should the landlord at any point form the view that any leaseholders may end up being asked to contribute to the cost of the works in a sum in excess of £250, the Tribunal would expect it to consult with the leaseholders without delay, as far as it can. There may ultimately be good reason to grant dispensation in due course, if required, but the Tribunal was not satisfied that it should do so at this stage.

20. This conclusion is not intended to prevent the Applicant from obtaining dispensation at a later date if required. The Applicant should apply to the Tribunal to re-instate this application, alternatively make a fresh application, if it becomes necessary.

21. Accordingly, this Leasehold Valuation Tribunal dismissed the application but granted the Applicant permission to re-instate it if required.

Dated this 8th day of August 2024

M Hunt
Tribunal Judge