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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference:LVT/0007/05/24

In the Matter of Premises at Cwrt Brenin, Mill Street, Pontypridd, CF37 2TS

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

Applicant:	~~**Western Permanent Property Limited**~~ **Cwrt Brenin Freehold Limited**
Respondent:	**Derry Marshall (Flat 11)**
Type of Application:	**To dispense with the requirement to consult lessees concerning qualifying works.**
Tribunal:	**Colin Green (Chairman)** **David Evans (Surveyor Member)**
Date of determination:	**4 September 2024**

DECISION

(1) Western Permanent Property Limited is replaced by Cwrt Brenin Freehold Limited as the Applicant.

(2) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the Tribunal grants dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (Wales) Regulations 2004 for the purpose of the proposed works described in paragraph 9 below.

(3) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable in respect of such works.

REASONS FOR DECISION

Background

1. Cwrt Brenin, Mill Street, Pontypridd ("the Development") is a development of 15 flats, numbered 1 to 16 (no flat 13). By a lease dated 10 September 2002 made between Cwrt Brenin Holdings Limited ("Holdings") and Cwrt Brenin Residential Limited ("Residential"), Holdings, the freeholder owner, granted to Residential a lease ("the Head Lease") of the Developoment for a term of 125 years from 10 September 2002.

2. Subsequently, underleases were granted of individual flats by Residential for a term of 125 years from 10 September 2002 less 10 days. A sample underlease of Flat 5 has been provided. The underleases contain the relevant service charge provisions. Cwrt Brenin Residential Management Company Limited ("Management") is a party to each of the underleases for the purpose of carrying out the Maintenance Obligations in respect of the Maintained Property (as those terms are defined in the underlease) and administering the service charge. Under paragraph 3 of the Eight Schedule to the Underlease, if Management goes into liquidation or fails to observe and perform its covenants under the Underlease, "the Lessor" will carry out those functions.

3. Management was dissolved on 6 September 2012, so that under the provisions of paragraph 3 of the Eighth Schedule, responsibility fell on Residential for dealing with the service charge. However, shortly thereafter, on 12 September 2006 Residential was also dissolved.

4. After the dissolution of Residential, the Head Lease will have vested in the Crown as *bona vacantia*, but it would appear from the office copy entries of the freehold title that the Head Lease was disclaimed by the Treasury Solicitor on 8 July 2020 and there are subsisting under leasehold interests. The freehold title was acquired by Cwrt Brenin Freehold Limited ("Freehold") in 2021 and by virtue of the disclaimer of the Head Lease Freehold will have become the immediate landlord of the underleases. Since Management had been dissolved, and by virtue of paragraph 3 of the Eight Schedule, Freehold became responsible for the Maintenance Obligations and the service charge. It has carried out such functions through the services of Western Permanent Property Limited ("Western"), the managing agent.

5. In the directions of 31 May 2024, Western was made the Applicant. In the Tribunals' view however, although it is Western that has had the conduct of this application as managing agent for Freehold, it is Freehold that is the appropriate Applicant.

6. The directions made Derry Marshall, of Flat 1, the sole Respondent.

7. Both parties indicated that they were content for the matter to be dealt with by way of a paper determination. Having reviewed the papers the Tribunal considers that appropriate. There were some queries concerning what had become of Management and the Head Lease which were dealt with by way of an exchange of emails between the Tribunal and Western. A site inspection was not considered necessary.

The Works

8. The works in question are the installation of a new fire alarm system at the Development. It would appear not to be functioning properly in the sense that it raises false alarms. According to the passage quoted in Mr. Shanahan's email of 22 March, the fire alarm service provider had this to say:

> *"All of these problems (false alarms) will go away once we install the new system as per previous quotations. We need to install a new control panel, new wiring throughout and re-design the detection so that the communal areas have smoke alarms and the flats each have a heat detector with sounder. Once this is in place, your wiring issues will be sorted and the only thing that should set off the system should be a genuine fire.*
> *I spoke with Neil this morning, he is going to come back to me with a plan to move forward.*
> *Please note though, the system in its current state does have a wiring/sounder fault which cannot be repaired and there are smoke detectors installed in many of the flats which is the cause of these nuisance alarms. We test the system weekly for you so we know it works of course but until we get this removed/replaced there's not a huge amount we can do other than support you as and when you need to silence/reset the system."*

9. Two estimates have been obtained in respect of the proposed works, which are like-for-like: £9,894.00 inc. VAT from JDS Fire & Security Solutions Limited, and £10,554.54 inc. VAT from Elite Fire and Security Limited. Western have indicated that it intends to proceed with the cheaper estimate from JDS.

Consultation

10. 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 on 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.

11. It is clear that on the basis of the above estimates the individual contributions will in each case exceed £250.00 so that he consultation requirements would be engaged.

The Application

12. The present application has been made seeking dispensation under section 20ZA in respect of the works mentioned in paragraph 9 above. Although two estimates have been obtained by Western and distributed to the lease owners, the remainder of the process, including the opportunity of lease owners to nominate alternative contractors, has not been followed. This would likely take at least 90 days in total, and Western considers that health and safety requirements make carrying out such work a matter of some urgency.

13. 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 the service charge provisions in the underleases and therefore that all or part of the cost of the works is recoverable by Freehold from the lease owners by way of service charge.

Determination

14. 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 provisions and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate.

15. Reliance is placed on the urgency of the work, but it should be borne in mind that urgency is not a necessary requirement for the grant of dispensation, nor of itself, sufficient to secure dispensation. It can be relevant to the exercise of the

Tribunal's discretion, but prejudice is the primary concern, see: *RM Residential Ltd -v- Westacre Estates Limited & Bellrise Designs Limited* [2024] UKUT 56 (LC).

16. Mr Marshall's statement identifies the following issues:

16.1. *Financial constraints, affordability and payment plan*. In the Tribunals view, such considerations have nothing to do with the consultation process or prejudice. They are important considerations for the lease owners but cannot effect whether dispensation should be granted.

16.2. *Inconsistent information provided by Western*. The Tribunal considers the case presented to be that the system is not functioning in the sense that false alarms are being triggered rather than that it is non-operational, which can only be remedied by replacement, see: the passage quoted at paragraph 8 above.

16.3. *Possible alternative solution*. It is understood that there is the possibility of the freehold title being transferred to a lease owners' nominee company in the near future. It is suggested by Mr. Marshall that after transferring management functions to a new entity, the work required can be reassessed. In addition occasional false alarms may not require replacement. There is no evidence at present however, concerning any alternative solutions.

17. When considering the issue of prejudice, it is important to recognise the limited ambit of the Tribunal's decision making in respect of dispensation. As noted above, in granting dispensation the Tribunal is not determining whether all or part of the cost of the works are recoverable under the service charge provisions, whether the works are the most appropriate solution, nor whether the cost is reasonable in amount. Mr. Marshall or any other lease owner can in the future challenge such matters in respect of their liability to pay the service charge attributable to the works and if necessary, apply to the Tribunal to determine such matters under s. 27A of the 1985 Act – for example, if Mr. Marshall wishes to contend that there was an alternative, cheaper solution to the fire alarm issue than that set out above.

18. Therefore, to the extent that there is any prejudice in dispensing with the full consultation requirements the Tribunal considers that this is adequately met by recognising the right to challenge the service charge should any lease owner wish to do so. Of course, whether any such challenge would be successful is another matter on which the Tribunal is unable to express a view.

19. In addition, in considering its discretion to grant dispensation the Tribunal recognises that there are health and safety concerns that favour the work being carried out expeditiously.

Conclusion

20. In the light of the above, the Tribunal determines it appropriate to dispense with the consultation provisions in respect of the proposed work set out in paragraph 9 above, making it clear that it is making no determination as to whether any service charge costs are payable or reasonable in respect of the work.

Dated this 11th day of September 2024

Colin Green
Tribunal Judge