

**Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)**

**Welsh Tribunals Unit, Oak House, Cleppa Park, Celtic Springs, Newport, NP10 8BD
Telephone 0300 025 2777. E-mail: rpt@gov.wales**

DECISION AND REASONS OF THE LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985, S.20ZA

Premises: 1-12 Rochester Mansions, Park Lane, Whitchurch, Cardiff, CF14 7AX

Applicant: Hafod Housing Association Limited

Respondents: Tenants/Leaseholders of 1-12 Rochester Mansions, Park Lane,
Whitchurch, Cardiff, CF14 7AX

Tribunal: Judge Lachlan McLean
Mr. K. Watkins FRICS

LVT Ref: LVT/0034/08/24

DECISION OF THE TRIBUNAL

The Tribunal grants unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (together, “the Consultation Requirements”) in relation to the works described by the Applicant in this application and consisting of the replacement of the roof (including felting and batons) of 1-12 Rochester Mansions, Park Lane, Whitchurch, Cardiff, CF14 7AX (“the Roofing Works”).

REASONS FOR DECISION

Preliminary

1. The Applicant is the landlord of residential premises known as 1-12 Rochester Mansions, Park Lane, Whitchurch, Cardiff, CF14 7AX (“the Property”). The Respondents are the tenants / leaseholders of residential apartments within the Property.
2. The Tribunal has received an application from the Applicant landlord, dated 7th August 2024, for an order granting dispensation from the Consultation Requirements in relation to the Roofing Works.
3. The Tribunal issued case management directions on 27th September 2024, which invited written representations from the Applicant. The Applicant has submitted

representations which are summarised below. Neither party requested a hearing, so the Tribunal's determination took place via Microsoft Teams on 3rd December 2024.

Inspection

4. A site visit was made on the morning of Tuesday 3rd December 2024, where the Surveyor Member, Mr. K. Watkins, met with representatives of the Applicant; namely Ms. Sarah Hancock (Head of Asset Management) and Mr. J. Higgins (Project Surveyor). The external envelope of the Property was viewed from ground level together and one internal communal space. It was noted that the main roof covering had been replaced and Ms. Hancock advised that this was carried out in September 2024.

Situation and Description

5. The Property is a purpose-built block of flats, situated on a small estate of similar buildings on the outskirts of the City of Cardiff, South Wales, constructed possibly in the early 1980s. The Property houses twelve self-contained flats with communal access to each over three floors (Ground, First and Second).
6. The building comprises mainly brick elevations beneath a simple pitched and tiled roof covering with PVCu fascias, soffits, barge boards, guttering and downpipes. Windows are primarily white double glazed PVC units with white PVCu infill panels beneath.
7. Access to the flats is via front entrance doors which are fitted with a door entry system, which serves the communal areas, with staircases giving access to each flat on each level. Rear exit doors have thumb turn locks and provide access to the store sheds and drying areas.

Issues

8. The only issue the Tribunal needed to consider was whether or not it is reasonable to dispense with the Consultation Requirements in relation to the Roofing Works. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable, and it will be open to tenants / lessees to challenge any such costs charged by the Applicant in due course (under Section 27A of the Landlord and Tenant Act 1985).

Law

9. The relevant sections of the Landlord and Tenant Act 1985 read as follows:

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

[...]

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, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(5A) And in the case of works to which section 20D applies, regulations under subsection (4) may also include provision requiring the landlord—

(a) to give details of the steps taken or to be taken under section 20D(2),

(b) to give reasons about prescribed matters, and any other prescribed information, relating to the taking of such steps, and

(c) to have regard to observations made by tenants or the recognised tenants' association in relation to the taking of such steps.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

10. The decision in the binding legal authority of Daejan Investments Ltd v Benson [2013] UKSC 14 confirms that the Tribunal, in considering dispensation requests, should focus on whether leaseholders are prejudiced by the failure to comply with consultation requirements.

Representations and evidence

11. The only written representations or evidence received were from the Applicant landlord, which explained the basis for its application through written evidence provided by Sarah Hancock (Head of Assets). Her evidence and submissions were set out partly in the Applicant's written application form of 7th August 2024, which was then supplemented through her written statement dated 24th October 2024. The evidence included a sample copy of a letter written by the Applicant to the Respondents on 5th August 2024, copies of quotes provided by two proposed contractors (IDM Doors Ltd and P.B.M. Wales Ltd), photographs of the prior state of the roof of the Property, seemingly dated 11th July 2024, a breakdown of the actual costs incurred, and a copy of the final invoice from IDM Doors Ltd dated 29th September 2024.
12. In summary, the position of the Applicant was:-

- 12.1. During the summer of 2024, following a complaint of a water leak from a resident of Flat 6 at the Property, the Applicant discovered that the roof of the Property was in poor condition and needed to be completely replaced.
- 12.2. Following the inspection of the Property, the Applicant concluded that the nature of the repairs needed was so urgent that they needed to be completed before the weather deteriorated in the latter part of 2024.
- 12.3. The Applicant attempted to source competitive quotes from five roofing contractors, three of whom declined to submit a tender and two of whom returned quotes.
- 12.4. On 5th August 2024, the Applicant wrote to the tenants / leaseholders of the Property to inform them of the proposed works, the need for them, the steps that the Applicant had taken to obtain competitive quotes, why the work had to start urgently, and the fact that it was in the process of applying to the Tribunal for dispensation from the Consultation Requirements.
- 12.5. The Applicant received two enquiries from leaseholders. A verbal explanation was provided and there was no further correspondence or any objection to the proposed works or to seeking dispensation from the Consultation Requirements.
- 12.6. The roof was scheduled for full replacement between 2026 and 2028 in any event, and the leaseholders' contributions to the cost of the works would be met from the Applicant's service charge reserve fund in respect of the Property.
- 12.7. The Roofing Works were completed on 4th September 2024 at a total cost of £61,980.86 (inclusive of VAT).
- 12.8. The Applicant argued that there was no prejudice to the Respondents in relation to non-compliance with the Consultation Requirements, because (a) the works were urgent and (b) there was no financial prejudice as the costs would be met from reserves.

Discussion and Decision

13. The Tribunal reminds itself that the only issue for determination was whether (and to what extent) it is reasonable to dispense with the Consultation Requirements on these particular facts. Any decision to do so inherently does not amount to any kind of finding as to the amount that the Respondents should pay by way of service charge, if anything, and also does not amount to absolving the Applicant or any other person of any responsibility for the situation at hand.
14. The Tribunal noted that the Roofing Works had already been completed by the time of the inspection of the Property. The Tribunal is aware that landlords are sometimes put in the position of having to undertake works urgently, before the Tribunal can give its ruling, and the landlord bears the financial risk in the meantime.
15. The Tribunal notes that none of the Respondents has formally objected to this application, or presented any case as to prejudice that they may have suffered. The Applicant's evidence as to the condition of the roof, the extent of the need for repair or replacement, and the timescales in which to complete the works, is entirely unchallenged.

16. The Tribunal notes that despite the urgency of the situation, the Applicant nonetheless made efforts to source competitive quotes and to inform the Respondents of its intentions. As such, the Applicant appears to have tried to comply with the spirit of the Consultation Requirements within the constraints of the situation in hand.
17. The Tribunal disagrees with the Applicant's contention that the mere fact that the costs of the works would be met from reserves means that the Respondents suffered no financial prejudice. The monies held in reserve are held on trust for the benefit of the Respondents. If those reserves are not defrayed upon the costs for which they are held, they must be applied to other expenses or else returned to the leaseholders. If they are used earlier than is necessary, then leaseholders may still be prejudiced by the premature replacement of a building component which may thus wear out at an earlier date in the future than otherwise would have been the case. The fact that the costs are met from reserves is therefore a mitigating factor, but not a complete excuse.
18. What is of more importance is that the overall prejudice to leaseholders may have been greater if works were delayed than if they were undertaken urgently. The costs of undertaking works over the winter, and/or the costs of remediating further water ingress, may have ended up being higher.
19. The real crux of prejudice in this situation is ultimately the issue of what could or would have been done differently if the landlord had complied with the Consultation Requirements in full. The Respondents have not made any suggestions in that regard as to what benefits there could or would have been in any alternative approach, and so it is to be assumed that they do not dispute the Applicant's assertion that its approach was a reasonable one in the circumstances.
20. As no Respondent has disputed the Applicant's approach, and there is no obvious prejudice to the Respondents, the Tribunal grants full dispensation with no conditions attached (as there were no evident potential conditions which would have been appropriate).
21. In reaching this decision, the Tribunal reiterates that it remains open to the Respondents to apply to the Tribunal, if they wish to do so, for a determination as to whether the costs of the Roofing Works are payable by them (including whether the costs were reasonably incurred and/or of a reasonable standard).

Dated this 4th day of December 2024

L.F. McLean (Tribunal Judge)