



**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CU/LDC/2020/0001**

Properties : **The Properties Shown on the Attached Schedule**

Applicant : **Watmos Community Homes Limited**

Respondents : **The leaseholders shown on the attached schedule**

Type of Applications : **An Application under Section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works**

Tribunal Members : **Dr Anthony Verduyn
Mr P Wilson BSc (Hons) LLB MRICS
MCIEH CEnvH**

Date of Decision : **14th September 2020**

DECISION

1. **The Tribunal grants dispensation from all or any of the consultation requirements of Section 20 Landlord and Tenant Act 1985 for the purpose of entering into the contract for the Works set out below with Surefire Management Services Limited.**
2. **The Tribunal’s dispensation is conditional upon the maximum sum that may be charged upon each flat shall not exceeding £13,000 inclusive of the costs of this application (if any).**
3. **In granting dispensation the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.**

REASONS

BACKGROUND

1. On 23rd April 2020 the Tribunal received an application to grant dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of works proposed to 12 tower blocks in Walsall, full details of which appear in the appended schedule. Under the provisions of the 1985 Act and the 2003 Regulations, the Applicant is required to consult if the cost of the works are in excess of £250 including VAT per leasehold interest. Most of the occupant tenants hold under short term tenancies, but 21 of the flats are relevant long leaseholds.
2. The Applicant’s proposals can fairly be summarised as comprising: external wall insulation treatment, access and associated works; structural repairs; window and door replacements (communal and individual flats); balcony refurbishment; balcony replacement (to 6 flats subject to this application in 3 buildings at Sandbank); asbestos survey and consequential remediation (if any); and associated repair work. Such works necessarily require extensive scaffolding and access equipment, which will be fully utilised in these circumstances. This whole programme will be termed “the Works” below.
3. Directions were issued on 27th May 2020 for the service by the Applicant on each of the Respondents of the application, the directions, a statement of case, specialist reports, quotations obtained and consultation to date. These documents were also filed with the Tribunal. The leaseholders were directed to file any statement in response by 10th July 2020. The Applicant complied with

directions but no leaseholder responded to the Tribunal (although one emailed the Applicant as noted below). No hearing was sought and the decision of the Tribunal was made on the papers as served.

THE LEASES

4. Two sample leases were filed by the Applicant. The first dated 4th February 2002 and made between Walsall Metropolitan Borough Council (the predecessor in title of the Applicant) and Mr Alan Bryan and Mrs Pauline Ann Bryan, being the lease of 8 Richards House. The second is dated 19th June 2006 and made between the Applicant and Michelle Poulton, being the lease of 13 Farringdon House.
5. The relevant provisions from each lease are the obligation of the lessee to pay service charges under clause 3 and the content of the Fifth Schedule (Service Charge) at paragraph 3 (estate expenditure). The latter includes within the service charge the Applicant's expenditure on "*any maintenance repairs renewals reinstatements rebuilding decorations or improvements on or in relation to the Estate (excluding any work which is the liability of any lessee of the [Applicant Landlord] and any works of a structural nature unless the lessee is liable therefor under the terms of Clause 3 of the Fourth Schedule) ...*". Clause 3 of the Fourth Schedule deals with the interior of the flat and services located therein, hence is irrelevant.
6. The Tribunal notes that it has insufficient information to determine the extent to which some of the proposed works would be "*works of a structural nature*". Further, this is not an issue before the Tribunal in this application.
7. By reason of the Covid-19 pandemic an inspection of the estates was not carried out by the Tribunal, but regard was had to the photographs within the bundle and internet accessed street views.

THE APPLICANT'S CASE

8. The Application relates to the Works to be carried out at 21 high rise tower blocks in Walsall. The Applicant is the freeholder of each, comprising a total of 1,731 flats. Of those flats, 31 are held under long leases and 21 are flats affected by the Works. The Works are clearly very substantial and are intended to be scheduled over a period of up to 3 years.
9. The Works has an unusual, but relevant, history. The initial scheme did not include balcony refurbishment and (importantly) external wall insulation. Correctly recognising that they were qualifying works under Section 20, Notice of Intention was issued under the consultation procedure on 21st March 2019.

Out of the leaseholders, 7 attended consultation sessions, but no formal observations resulted. Tender information packs and provisional estimates for costs were provided to leaseholders, and a tender report was compiled in August 2019. Engie Regeneration Limited was evaluated as the best offer in a total sum assessed at £15,002,711.60.

10. At this point, the Applicant reviewed matters in the context of its Asset Management Strategy and its specific ambitions to improve thermal efficiency and reduce fuel poverty. It became apparent in this review process that External Wall Insulation could be added to the Works, but offset against grant funding from Ofgem hence, potentially, the additional work would be at no additional net cost to the lessees or the Applicant.
11. The means to this end were to place the contract for the Works employing a Framework Agreement procured by Walsall Homes Group Limited (“WHG”) and available to the Applicant. The contract would then go to Surefire Management Services Limited (“SMS”), who had already done similar works on WHG tower blocks and so were also a known quantity. The SMS proposal is in a total sum assessed at £14,982,787.72. It follows that the Applicant says the costing is essentially identical within any ordinary margin of error, but the Works now attract a subsidy of more than £4,000,000 covering, particularly, the insulation. Unsurprisingly, the Applicant wants to place the contract with SMS on this basis.
12. The Applicant does not believe it can consult within the statutory provisions when placing a contract under the Framework Agreement. Even so, it has replicated a Notice of Intention and served this on the leaseholders on 18th March 2020. Three observations resulted, dealing with estimated costs, commencement dates and building construction. All have been addressed in correspondence, because face-to-face meetings have been precluded by the pandemic. The cost per flat under each scheme is comparable, at about £14,000, but under the SMS scheme the value of works to the tune of an extra £3,700 will be met by the subsidy. The Applicant has further volunteered a cap per flat of £13,000, removing the risk of extra expenditure being found necessary outside the current budget of SMS.
13. The application is the result of concerns that placement of the contract under the Framework Agreement is incompatible with the statutory consultation regime, but it is particularly pressing also because the Applicant is concerned that the grant cannot be secured until work is underway and it could be withdrawn or reduced. The Applicant initially sought a decision from the Tribunal, somewhat optimistically it might be said given the current restrictions arising from the COVID-19 pandemic, by the end of April 2020.

14. Whilst no response was received by the Tribunal from any leaseholder, an email of 19th June 2020 was sent by Mr Bryan disparaging the Works in somewhat scornful terms. He doubted the benefit of the insulation and asserted that he had been told that no consultation was required. A lengthy response resulted from the Applicant detailing the rationale for the Works. Mr Bryan was undeterred and in an email of 27th June 2020, he expanded on his complaints, stating that £13,000 for replacement of 4 windows and a door, plus work to the balcony was “very excessive”. He was unhappy at the resort to major works, and did not approve of the proposed visual appearance of the block. He was rather more content with the proposal for deferring payment of £13,000. The response by the Applicant was again quite lengthy, and invited any objection to be sent to the Tribunal forthwith. None was received then or later.

THE LAW

15. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
16. There are essentially multiple stages in the consultation procedure: the pre-tender stage; Notice of Intention at the tender stage; Notification of Proposals including estimates; and, in some cases, a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.
17. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

DISCUSSION

18. To some extent, the Applicant appears to have proceeded on a misapprehension of the relevant law. It has stated that “Framework contracts do not fall within the existing Section 20 consultation process in terms of Qualifying Long Term Agreements”. This is not necessarily the case, and in Kensington and Chelsea RLBC v Lessees of 1-124 Pond House, Pond Place, London SW23 [2015] UKUT 395 (LC) the landlord succeeded in establishing that the framework agreements it proposed to enter into in order to support the delivery of repairs and

maintenance works were qualifying long-term agreements within the meaning of Section 20. That case enlarges upon matters that need not be set out here. Of course, there can be circumstances (like where a landlord seeks to join an established Framework Agreement), where it is impractical or impossible to comply meaningfully with the consultation regime. It is presumably this that the Applicant has in mind, although in this case market comparison is possible, although likely to be futile absent the obtaining of the grants.

19. The circumstances are, nevertheless, that there is an identifiable risk that, unless matters are progressed without delay, the grant aid worth more than £4,000,000 could be lost. Furthermore, in its application, the Applicant stated that its business plan approved by its bankers requires commitment to the overall capital expenditure of around £17 million within a specified period. There has also been the delay caused by the current pandemic, and the pressure that the emergency is placing on public finance, to be considered. In these circumstances, the Tribunal finds that matters are urgent and Section 20ZA is plainly engaged.
20. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. However, following the Supreme Court's judgment in Daejan Investments Limited v Benson et al. [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take into account the extent to which leaseholders were or could be subject to actual or potential prejudice resulting from the landlord's failure to follow formal consultation procedures under Section 20.
21. The failure to consult in this case has had negligible identifiable impact on the leaseholders. The consultation process for lesser works in 2019 yielded questions, but no counter-proposals or objections. The quasi-consultation engaged in during 2020, and the service of these proceedings, led to critical comment from only one lessee and that not pursued to the Tribunal. Opportunity to respond to the proposals has accordingly been extensive and no prejudice has been identified.
22. The Tribunal also takes into account the offer of a cap at £13,000 per leasehold flat as a maximum liability. This is an important protection, which may explain the tacit acceptance of the proposals by the leaseholders.
23. Taking the absence of prejudice and the offer of a cap at £13,000, the Tribunal considers that full dispensation should be granted, albeit that this is conditional upon the cap.
24. The Tribunal observes that it has only considered the issue before it, that is to say, dispensation from the statutory regime. This is not a determination of the

reasonableness of service charges (Section 19) or liability to pay service charges (under Section 27A). The former may still be an issue for Mr Bryan and the latter may arise from the exclusion of some works of a structural nature under the terms of the Lease. Further, were these to become issues before the Tribunal, they would also no doubt be considered in the context of the cap imposed by this Tribunal.

25. Finally, and for the avoidance of doubt, the cap imposed by this Tribunal will include any sum that may be recoverable through service charges for the cost of this application. This is appropriate given that the leaseholders did not in any sense cause this matter to be brought before the Tribunal, and the costs of the application are more properly an incident of the statutory duty imposed upon landlords.

APPEAL

26. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Tribunal Judge Dr Anthony Verduyn

Dated 14th September 2020

SCHEDULE OF RESPONDENT LEASEHOLDERS

Dr R Suri & Mr R Suri	13 Farringdon House	Green Lane	Walsal l	WS2 8NP
Mrs R Faulkner	25 Farringdon House	Green Lane	Walsal l	WS2 8NP
Mr C Barnes & Mrs L Barnes	28 Farringdon House	Green Lane	Walsal l	WS2 8NP
Mr E T Hopwood & Mrs C Hopwood	24 Regent House	Green Lane	Walsal l	WS2 8NR
Mr & Mrs A Bryan	8 Richards House	Burrowes Street	Walsal l	WS2 8NN
Mr M Haines	44 Winn House	Burrowes Street	Walsal l	WS2 8NW
Miss S Wallbank	26 Winn House	Burrowes Street	Walsal l	WS2 8NW
Ms KT Steane	20 Winn House	Burrowes Street	Walsal l	WS2 8NW
Mr A S E Palmer	40 Brookes House	Tantarra Street	Walsal l	WS1 2HS
Mr DF Davies & Mr DM Davies & Mr MD Jones	43 Bywater House	Tantarra Street	Walsal l	WS1 2HL
Mrs B Monnington	7 Croft House	Tantarra Street	Walsal l	WS1 2HP
K S Chatha & J S Chatha	13 Croft House	Tantarra Street	Walsal l	WS1 2HP
Mr SA N Abbasi	46 Millsum House	Tantarra Street	Walsal l	WS1 2HN
Mrs & Mr S Juric	8 Millsum House	Tantarra Street	Walsal l	WS1 2HN
Mr N Kaur	8 Ludlow House	Providence Lane	Walsal l	WS3 2AH
Mr & Ms MJ E Evans	36 Cartwright House	Sandbank	Walsal l	WS3 2HD
Mr R Davis	19 Davies House	Sandbank	Walsal l	WS3 2HE
Ms E J Biddle	32 Davies House	Sandbank	Walsal l	WS3 2HE
Mr P Jordanou	54 Davies House	Sandbank	Walsal l	WS3 2HE
Mr I V Russell & Mrs M Russell	10 Davies House	Sandbank	Walsal l	WS3 2HE
Mr & Mrs J M Noakes	23 Wilkins House	Sandbank	Walsal l	WS3 2HG