



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

Case Reference : **MAN/00DA/LDC/2018/0042**

Property : West Point Wellington Street Leeds LS1 4JL

Applicant : West Point Leeds Management Company Limited

Representative : JB Leith Solicitors

Respondent : Various Respondents

Type of Application : s20ZA Landlord and Tenant Act 1985

Tribunal Members : **Mr John Murray LLB**
Ms. Aisling Ramshaw FRICS

Date of Determination : 23 April 2019

Date of Decision : 16 April 2019

REASONS FOR DECISION

DETERMINATION

The Tribunal determines that dispensation from consultation for a three-year Buildings Insurance contract be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made by West Point Leeds Management Company Limited for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 (“the Act”) in relation to the procurement of buildings insurance for a three-year period, which had been entered into before the application was made.

THE PROCEEDINGS

2. Directions were made by a Procedural Judge on the 15th February 2019 for the matter to be dealt with as a paper determination.

3. The Applicant was required to file and serve by 8th March 2019 a bundle of documents with (amongst other items) a statement of case, and copies of any correspondence sent to the leaseholders in relation to the works, including an explanation and any documents confirming the urgency of the works, any quotes or estimates for the works, and copies of any other documents relied upon in evidence.

4. Any Respondent was permitted within fourteen days of receipt of the above to send to the Applicant’s representative any statement made in response to the Applicant’s case, including documents.

5. The Tribunal would determine the matter on the papers received unless any of the parties requested a hearing. No inspection of the property was deemed necessary. No parties requested a hearing.

THE APPLICATION

6. The Application (dated 17 December 2018) sought dispensation from the statutory consultation process in respect of a Qualifying Long-Term Agreement, namely a three-year buildings insurance policy.

7. The Application outlined that the agreement between the Applicant and Aviva Plc had already been entered into, and that there had been no consultation to date. Further information was to follow in the statement of case.

THE APPLICANT'S STATEMENT OF CASE

8. The Applicant's solicitor, Mr. Phillip Parkinson submitted a detailed statement in support of the application.
9. Mr. Parkinson confirmed in his statement that the Applicant was the head leasehold owner of West Point Wellington Street Leeds ("the Premises") pursuant to a 999-year (less one day) lease dated 24 August 2005 made between the Applicant and the freeholder, West Point Leeds Limited.
10. The Applicant let out apartments at the Premises on long residential leases, said to be all on similar terms. A list of the Respondents was attached to the Application.
11. The building insurance policy for the Premises to the service charge year ending 31 December 2018 had expired. A further agreement with the existing insurers, Aviva, had been entered into for a three-year period, to keep the Premises insured at a competitive premium for the forthcoming year, and the for the following two years, 2020 and 2021, and consequently this was a Qualifying Long-Term Agreement, which had been entered into without statutory consultation. The Policy was for the years 6 October 2018- 5 October 2019, 6 October 2019 - 5 October 2020, and 6 October 2020 - 5 October 2021.
12. The Lease provides at clause 3.1 that Tenants had to pay the fair and proper proportion of the Expenditure as defined in Schedule 4, and Paragraph 1 Part A of Schedule 4 provides the definitions for the Services, Expenditure Surveyor and Account Year. Paragraph 6.2, Part C of Schedule 4 provides that the cost of insuring the Estate in accordance with the terms of the Headlease was part of the cost of services provided. Schedule 3, paragraph 4 of the Head Lease obliges the Applicant to not do anything which would invalidate any insurance policy in respect of the Property and to comply with the requirements and reasonable recommendations of the insurers and the fire authority in relation to the Property.
13. Mr. Parkinson outlined the insurance history of the Premises. The Premises has been insured by Aviva for the previous 10 years, and has been subject to a high number of claims as result of bursting water tanks within individual apartments over the last five years. Claims over the last five years had outweighed the costs of premiums, such that Aviva had made a significant loss.
14. At the insurers request, an automated system had been put in place at the premises which would detect leaks and in the event of a leak occurring operate to shut off valves to each apartment to reduce the prospect of water damage; Aviva were yet to benefit from the benefit of reduced water claims.

15. Premiums had consequently increased during this time, from £79,000 per annum in 2013, to £200,000 per annum in 2017.
16. The Applicant's insurance brokers, Jelf, had commenced negotiations with Aviva for the service charge year 2019. Aviva were understandably concerned about the loss ratio, calculated by analyzing the relationship incurred losses and earned premiums.
17. Aviva had proposed a £292,000 premium for the current year, but had proposed that if a three-year agreement was made, and the policy loss ratio was improved, premium reductions would be offered in subsequent years, taking into account the valve shut off system installed.
18. There was also to be an increased excess to £1500 for escape of water in respect of the two options, to be reduced to £500 if a dwelling has had a new water tank installed within the last two years which has been serviced annually in accordance with manufacturer's guidelines since installation by a competent gas and heating engineer; the said tank must have a maximum capacity of 20 litres, and no expansion tank.
19. Finally, and crucially, the Applicant's statement provided details of 19 insurance providers that Jelf had approached seeking quotes. Only two of the companies approached were prepared to quote and both of these were in excess of £300,000 for the year, owing to the high claims history. The Applicant submitted therefore that the Premises were almost uninsurable.
20. Mr. Parkinson clarified that if a one-year contract was taken and the Premises had an improved claims year, the market might open up to other providers. However currently no other insurer would quote below £300,000, and Aviva's quote was at least £58,000 below the market premium. Jelf's opinion was that one year's worth of lower claims would be unlikely to reduce premiums offered by other insurers; in the event of a further poor claims year the Applicant might lose Aviva as a prospective insurer.
21. Consequently, the three-year proposal, which had been improved following further negotiation, would see the 2018 premium of £242,061.20 reducing to £174,889.22 over two years, a saving of £67,171.98.
22. The Applicant had covenanted with the Head Landlord not to do anything to invalidate insurance and comply with the reasonable requirements of insurers. To leave the Premises uninsured would be a breach of the terms of the Head Lease. The Applicant had covenanted with Lessees to insure the Premises, and furthermore was aware of the need to ensure future compliance with the terms of the Head Lease.

23. The Applicant was aware of the statutory requirement for consultation, and summarised the process and the time frame involved for the benefit of the Respondents, and why, in its view it was reasonable for the Tribunal to grant dispensation under section 20ZA of the Act.

THE LEGISLATION

24. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows

s20 ZA 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.

(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

OBSERVATIONS FROM THE RESPONDENTS

25. No observations were received from any of the Respondents.

THE DETERMINATION

26. The Tribunal has jurisdiction to dispense with consultation before works have been carried out

27. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of *Auger v Camden LBC* in March 2008. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise

28. Dispensation was considered in depth by the Supreme Court in *Daejan v Benson* [2013] UKSC14 which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work - as with the present case. In such cases it would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.

29. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal’s general powers to award costs, (which at that time were limited), drawing a parallel to the Court’s practice to making the payment of costs a condition of relief from forfeiture.

30. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.

31. No observations or representations were made by any of the lessees; it would clearly be a difficult task for an individual to obtain their own quote to insure the building. The Applicant had set out very clearly the process they had followed to obtain insurance cover with the best premium and terms available to them in the circumstances, and their broker had made extensive enquiries on their behalf.

32. It was clearly essential to insure the premises, both in terms of protecting the leaseholder’s interests, and complying with the terms of the Head Lease, and on the evidence Aviva were offering the significantly better value cover.

33. The Applicant provided the Tribunal and leaseholders with comprehensive details of the problems leading to increased premiums and lack of a wide pool of insurers willing to quote for the Premises.

34. Steps had been taken to improve premiums going forward by active management of the problems giving rise to a high level of water escape claims, which ought in the fullness of time see a reduction in such claims, and a consequent reduction in premiums and the possibility of a wider range of insurance providers being prepared to offer cover.

35. No lessee had objected to the application, and the Tribunal is satisfied on the information before it that there was no prejudice to any of the Lessees. In all the circumstances the Tribunal determines that it is reasonable to dispense with consultation, retrospectively given that the Applicant has already insured the Premises for a three-year term.

Tribunal Judge J Murray LLB

16 April 2019

