



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

Case References : **BIR/44UF/LDC/2022/0034**

Property : **51 Friars Street Warwick CV34 6HD**

Applicant : **Warwick District Council**

Representative : **Jane Rostron (ref: Housing Officer)**

Respondent : **Redcotts Properties Ltd**

Type of Application : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements.**

Tribunal : **Judge P.J Ellis.
V Ward BSc Hons FRICS – Regional Surveyor**

Date of Decision : **17 March 2023**

DECISION

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The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of a contract for qualifying works namely the supply and installation of security doors and screens to the front and rear of block 41-54 Friars Street Warwick which were programmed to start in November 2022.

Background

1. By an application received by the Tribunal on 27 October 2022, the Applicant urgently sought dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. Section 20 of the 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.
3. The only issue for the Tribunal to determine under this application is whether it is reasonable to dispense with the statutory consultation requirements.
4. This application does not concern the issue of whether any service charge costs will be reasonable or payable.
5. The Tribunal issued Directions in respect of this matter upon receipt of the application with timetable for disposing of the matter including for it to be determined on the papers unless the Respondent required otherwise. Neither side requested an oral hearing. Accordingly, the matter was considered without the attendance of the parties and without an inspection. The Respondents have not made any submissions in response to the application.

The Property and the Leases

6. As the Tribunal did not inspect the subject Property the description is taken from the unopposed statement of Jane Rostron, the Applicant's Customer Involvement Officer. The Tribunal has examined the leases submitted with the application to verify and confirm the Applicant's obligations referred to in Ms Rostron's Statement that the Applicant has an obligation to maintain the block of flats.
7. The property owned by the Respondent is one of six individual apartments in a single block known as 41-51 Friars Street Warwick. The Applicant is entitled to demand service charges under the terms of the lease at clause 4(ii) and the fourth and sixth schedules.

The Reason for the Application

8. The Applicant is the Landlord of approximately 630 leasehold properties including the subject Property. A qualifying long term agreement was entered into on 1 April 2021 with Baydale Control Systems for the maintenance of doors, door entry systems and associated electronic safety systems.
9. Qualifying works comprising the supply and installation of security doors and screens to the front and rear of block 41 – 51 Friars Street Warwick were programmed to start in November 2022.
10. A Section 20 consultation letter and Notice of Intention about the works proposed was sent to the one leaseholder in the block on 7 October 2022.
11. In 2016, a Section 20 consultation was carried out with leaseholders regarding the Applicant's intention to enter into a QLTA with Baydale for the provision of maintenance and upgrade of housing door entry systems, security doors, CCT and common area fire detection systems. Subsequent consultations were carried out on Qualifying Works carried out under the QLTA.
12. The contract was inadvertently let again to Baydale without any section 20 consultation.

13. The Applicant is seeking dispensation of the consultation requirements to enable them to continue with the contract to carry out Qualifying Works and recharge those works to the leaseholders.
14. The Applicant averred that Baydale has worked with them for approximately 10 years. It submits the leaseholders will suffer no prejudice if this application is granted. In any event the costs of the works are open to challenge if the leaseholders regard them unreasonable.

Discussion and Decision

15. There is no objection to these applications by the Respondents. No issues have been raised regarding the terms of the lease and the respective obligations it imposes upon the parties. However, the Tribunal must be satisfied under s20ZA that it is reasonable to dispense with consultation requirements.
16. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20.
17. In this case the Tribunal is satisfied the Applicant has acted reasonably by instructing Baydale to carry out further work of the type that company was legitimately retained to carry out after the consultation of 2016. There is no complaint that the work is not necessary. The leaseholders are not prevented from challenging the reasonableness of any service charges arising from the relevant work.
18. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements before entering a contract for qualifying works namely the supply and installation of security doors and screens to the front and rear of block 41-54 Friars Street Warwick which were programmed to start in November 2022

Appeal

19. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Tribunal Judge PJ Ellis.