



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

Case Reference : **MAN/16UG/LDC/2023/0059**

Property : **Various Leasehold Properties in the Applicant's ownership**

Applicant : **South Lakes Housing**

Representative : **Andrew Martin-Counsel**

Respondents : **Various Residential Long Leaseholders**

Type of Application : **Section 27A Landlord and Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member A. Davis**

Date of Decision : **15 January 2024**

Date of Determination : **30 January 2024**

DECISION

Decision

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 relating to a Qualifying Long-Term Agreement (“QLTA”) for property insurance is granted.
2. The QLTA is in respect of an insurance policy entered into by the Applicant with Protector from 1st April 2023 for a term of 5 years.

Background

3. This is an application made by South Lakes Housing (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) relating to a QLTA entered into it with Protector for a term of 5 years from 1st April 2023 to insure its housing stock including 350 long leasehold and shared ownership schemes. Under the leases under which these properties are held, the Applicant has an obligation to insure them and recover the cost through the service charge.
4. The Applicant employed Gibbs Laidler as its consultant and Marsh as its insurance broker. Tenders for property insurance were offered but only one company was prepared to provide a quote and that was from the existing insurance provider, Protector.
5. Under the requirements of Section 20 of the Act, the Applicant served a Notice of Intention to the various leaseholders on 8th November 2022, to which no observations were received. It then received advice that a revaluation of its stock was required to ensure the insurance policy provided adequate cover. Savills was instructed to carry out the revaluation. This caused a delay given the quote originally given by Protector had to be revised. As a result, the Applicant was unable to complete the consultation process prior to the insurance renewal date of 1st April 2023.
6. The application for permission to dispense with the requirements of Section 20 of the Act is dated 27th July 2023 and in respect of which directions were issued on 4th October 2023 providing for the filing of any objections by the Respondents and for the application to be determined without a hearing.
7. The Applicant advised there had been 3 responses to the application. The Tribunal received a letter of objection from Vicki Bertram and to which John Mansergh filed a Statement in Reply on behalf of the Applicant. No other representations were received by either the Applicant or the Tribunal.
8. The matter was thereafter listed for a hearing on 15th January 2024.

The Law

9. Section 20 of the Act provides:

(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) dispensed with in relation to the works or agreement by (or on appeal from) a 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 the 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”

10. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section

20ZA of the Act.

11. Section 20ZA of the Act provides:

- (1) *Where an application is made to a tribunal for a determination to dispense with all or any 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 section (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

12. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements.

13. In **Wynne v Yates and others [2021] UKUT 278 LC** Upper Tribunal Judge Elizabeth Cooke said:

“There must be some prejudice to the tenants beyond the obvious fact of not being able to participate on the consultation process.”

The Hearing

14. At the hearing the Applicant was represented by Andrew Marin, Counsel and John Mansergh, its Director of Business Improvement. Vicki Bertram advised on the morning of the hearing she did not intend to attend.

15. Prior to the hearing, Andrew Martin had helpfully provided a skeleton argument on behalf of the Applicant which set out its case and this was amplified at the hearing, together with additional evidence from John Mansergh. The Tribunal endeavoured to address the concerns raised by Vicki Bertram in her statement. The Tribunal could not deal with those matters relating to the reasonableness of the increased insurance premiums, nor whether they are payable. Those do not fall within the present application and are a separate matter for the Respondents to bring before the Tribunal.

16. Andrew Martin submitted the test for whether an application under Section 20ZA of the Act should be granted is whether any prejudice has been suffered by the failure to comply with the requirements of Section 20. Here, it was submitted, there was no prejudice. He referred the Tribunal to **Daejan** [45] and Lord Neuberger:

“Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason); in such a case the tenants would be in precisely the position that the legislation intended

them to be-i.e. as if the Requirements had been complied with”.

17. It was confirmed the process to secure an insurance policy began in May 2022. Gibbs Laidler were appointed as the consultant, having worked for the Applicant in 2018 when the insurance was previously renewed. There was significant work undertaken pre-tender to try and reduce the likelihood of the Applicant failing to secure any offers of insurance. This arose from a claim made in 2015 for flooding that resulted in a claim for £2.5 million. It was only in February 2023 this process was completed and only one offer of insurance was made; this was from the existing insurer, Protector.
18. John Mansergh confirmed the insurance quote did consider the flood defences. There is work being undertaken by the Environment Agency that should be completed by the end of the financial year and which, hopefully, should be of benefit when procuring insurance in future years.

Determination

19. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
20. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Applicant has confirmed that, despite the tendering process, it received one offer of insurance for its stock. There is no prejudice to the Respondents by the Applicant’s failure to comply with the requirements of Section 20. If the requirements of Section 20 had been undertaken, the outcome would have been no different. There was no alternative insurer for the Respondents to consider.
21. The Tribunal noted the Applicant has engaged with the Respondents, explained what steps it is to take and received 3 responses of which only one Respondent, Vicki Bertram submitted a statement to the Tribunal.
22. In her objections Vicki Bertram queried why the Applicant did not insure for 1 year and then try again at the renewal date. The Tribunal did not find the Applicant’s decision to insure for five years to be unreasonable, given the apparent work involved in the renewal process and the risks of increased premiums in future years. The current policy provides certainty for 5 years. No evidence was brought before the Tribunal to show a lesser period of insurance would result in lower costs to the Respondents.
23. The granting of dispensation does not affect the Respondents’ rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).