



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

- Case Reference** : **MAN/00CA/LDC/2023/0020**
- Property** : **Various Properties in the Borough of Sefton**
- Appellant** : **One Vision Housing Limited -represented by
Trower Hamlins, Solicitors (Miss L James)**
- Respondents** : **The long leaseholders of individual
dwellings**
- Type of
Application** : **Application under Section 20ZA Landlord
and Tenant Act 1985 (to dispense with
Section 20 consultation)**
- Tribunal
Members** : **Mr J Faulkner
Mr J R Rimmer (Tribunal Judge)**
- Date of Decision** : **1st February 2024**
- Order** : **The dispensation sought by the Applicant
from compliance with section 20 Landlord
and Tenant Act 1985 is granted for the
reasons set out herein.**

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Application and background

- 1 The Applicant in this matter is One Vision Housing Limited which is the provider of a significant proportion of the social housing available within the Metropolitan Borough of Sefton.
- 2 The Application is one made under Section 20ZA Landlord and Tenant Act 1985 (“the Act”) seeking a dispensation from the requirement to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003) in relation to what are termed “qualifying works” within that section.
- 3 The Respondents are long leaseholders of nearly 230 dwellings within the Applicant’s portfolio that have been acquired under “right to buy” schemes. They are spread throughout and across the portfolio and are often described as being “peppercotted” by reason of their spread throughout the range of housing and the geographical area.
- 4 The works in question are described in the statement of case provided by the Applicant and fall into 4 categories.
 - (1) Roof works
 - (2) Internal redecoration
 - (3) Door and entry system replacement
 - (4) Refurbishment of common partsThey are set out in more detail in paragraph 3.1.3 of that statement of case.
- 5 Not all properties will, either by the nature of the property, or their current state and condition, require works from all 4 categories and precise details of what will be required for each individual property will only be determined when scoping and preliminary surveys take place as the proposed works commence.
- 6 3 leaseholders have provided objections to the granting of the dispensation and the matter now comes before the Tribunal at the Civil and Family Justice Centre, Vernon Street, Liverpool for a hearing attended by representatives of the Applicant, Miss L James, Solicitor for the Applicant and Mr Rushworth, a long leaseholder of a flat within the portfolio. The Tribunal also had before it written representations from the two other objectors, Ms Colton and Ms Vanriel.
- 7 There were other leaseholders who raised enquiries with the Applicant as to the likely cost and effect of any works proposed for their respective properties, but they did not raise subsequent objections.

The Law

- 8 Section 18 Landlord and Tenant Act 1985 defines both a “service charge” and also “relevant costs” in relation to such charges whilst Section 19 of the Act limits the amount of those costs that are included in such charges to those which are reasonably incurred in respect of work which is of a reasonable standard.
- 9 Section 20 of the Act then proceeds to limit the amount of such charges that may be recoverable for what are known as “qualifying works” unless a consultation process has been complied with. By Section 20ZA of the Act qualifying works are any works to the building or other premises to which the service charge applies and the relevant costs would require a contribution from each tenant of more than £250.00.
- 10 Section 20ZA(1) particularly provides that:
“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...the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”
- 11 The consultation process envisages a multi-stage approach by requiring:
 - (1) A notice of intention to carry out qualifying works
 - (2) The right of the leaseholders to nominate a contractor
 - (3) The need for two, or more, estimates
 - (4) The need to give reasons for the eventual choice of contractor.It is in respect only of the last of these that the Applicant seeks its exemption.

Inspection

- 12 The nature of the Application before the Tribunal is such that a view was taken that an inspection of all, or any, of the relevant properties would serve no useful purpose and the requirement for such an inspection was accordingly dispensed with.

Hearing and evidence

- 13 The Application was presented in accordance with the statement of case provided by the Applicant, prefaced by an explanation as to why the Section 20 consultation process and the need to seek dispensation under Section 20ZA was applicable to the situation where the proposed contractor, Sovini Ltd, was part of the same group structure as One Vision Housing. Accompanying the Statement of case were a number of annexes providing more detailed information as to the affected properties,

specifications for certain works that had been identified and an extract from Rand Associates assessment of the competitiveness cost in relation to Sovini Ltd.

- 14 From the Applicant's perspective, the leaseholders would suffer no prejudice if the dispensation was granted. Sovini were contractors approved under the Public Contract Regulations 2015, working to an appropriate standard. There were economies of scale to be had from having one contractor responsible for all the works, rather than the prospect of a number of smaller contracts and contractors.. The use of the one contractor would also overcome potential logistical issues of different works being carried out by different contractors under different supervision within particular single developments. Matters of concern arising during the works could be more easily addressed than if a number of contractors were involved. The costs would also be likely to be such that there would be no financial prejudice, for which the Respondents might otherwise be able to seek redress, following the principle in *Daejan Investments Limited v Benson* [2013] UKSC 14.
- 15 Miss James stressed that the issue of seeking a dispensation was entirely separate from that of any proceedings relating to the cost of the work and the Respondents would still be entitled to make application under section 27A of the Act for a determination as to whether the costs incurred were reasonable.
- 16 Mr Rushworth, the only one of the objectors in attendance raised three issues where he felt that prejudice would be suffered:
 - (1) The cost of the works and the necessity for them in view of a £3.4 million grant in 2015 which he believed related to similar work.
 - (2) The ability of One Vision/Solvini to respond to queries and challenges as they arose during the work, given what he perceived to be difficulties that he experienced generally in obtaining responses in other matters.
 - (3) The standard of workmanship and quality of materials, given the particular difficulties encountered in this regard in relation to extensive work carried out on his particular by a previous contractor.
- 17 Ms Vanriel made much the same point in her written submission about previous works, describing them as "naff" and relating a conversation with contractors about replacement doors. Her experience of dealing with Solvini she described as a "nightmare".
- 18 Both Ms Vanriel and Ms Colton expressed concern as to the benefits of the work in relation to the costs involved and the value to the leaseholders in respect of their own properties. There was no clear plan to the works and the scope of the works, in relation to individual properties, was unclear.

- 19 The Applicant responded in order to try to alleviate some of those concerns.
- (1) It was clear that not all of the 4 categories of work would be required on all properties. There would be many for which there would be only limited need for work. It would only be possible to deal with individual properties and their needs when the scoping and preparatory work was undertaken.
 - (2) The £3.4million grant related to environmental works not connected with the works now under consideration.
 - (3) Different styles and quality of doors had been provided under the last work programme. This was largely because work had been undertaken by a large number of individual tenants and provision of “like for like” replacement was considered appropriate where that had happened.
 - (4) The two staff members of One Vision at the hearing, Mr Poland and Mr Stewart, offered themselves as a conduit for information and contact in an attempt to establish a clear line of communication with leaseholders concerned about the works to be undertaken.
- 20 Mr Rushworth asked why there had been no attempt to recover any payments to one particular contractor in the last major works programme on his development, or seek to deal with defects by way of an insurance claim. To the extent that the question related to a dispensation, rather than an examination of reasonableness of costs incurred, the issue was whether the project could and would be managed correctly to provide the benefits suggested.

Determination

- 21 The Tribunal’s power under Section 20ZA Landlord and Tenant Act 1985 is to determine that on an application to dispense with some or all of the consultation requirements under Section 20 it is satisfied that it is reasonable to dispense with those requirements.
- 22 It is clear that the proposal by the Applicant to dispense with a consultation has merit.
- (1) There is a clear benefit to be had from ensuring that only one contractor is used and that management of the scheme will be easier.
 - (2) There will be far less likelihood of overlap in relation to time, effort and cost.
 - (3) The logistical exercise of assessing individual properties or blocks of properties of various sizes to seek an appropriate level of involvement in the consultation process would be avoided. The Tribunal is minded to consider that a project such as that proposed will deter participation in any event. The fact that only 3 leaseholders have raised objections to this application may be evidence of that.

- 23 Whilst not producing clear evidence of financial prejudice in terms of likely basic contractual costs, those leaseholders who have objected have been able to articulate a number of concerns in relation to how the work will be managed and what the standard will be, particularly in the absence of any competition for the contract, even in the absence of any overlap with previous works.
- 24 With the benefit of hindsight explanations for the Applicant's plans could have been clearer in relation to the purpose of a dispensation application and its relationship to a challenge in respect of reasonableness of costs. It might also have alleviated concerns over the extent of works relevant to particular properties if it had been clearer about the variable nature and extent of works yet to be fully assessed.
- 25 The Tribunal is nevertheless of the view that there will be no prejudice to the Respondent leaseholders if a dispensation is granted to the Applicant solely on financial grounds. It is satisfied that upon the evidence adduced as to the relationship with Solveni and the evident benefits to be had from a single contractor working on all the relevant properties will outweigh the likely outcome of any consultation process.
- 26 The other concerns of those Respondents who have joined in the Tribunal process are real. Although the Tribunal did not meet Ms Vanriel her views echo those of Mr Rushford and her expression of them are suggestive of veracity. Work required to individual properties and their cost/benefit relationship are referred to above. The concerns about communication and contractors' standards are less easily explained.
- 27 It would appear to be the case that whoever was chosen as contractor, by whatever means, there would always remain what the Respondents see as failures to respond to legitimate concerns and engage with the tenant body to its satisfaction. Those tenants are, however, unlikely to be any worse off and the Tribunal assumes it can take Mr Poland and Mr Stewart at their word about being appropriate points of contact in the future.
- 28 If what Mr Rushworth says about one previous contractor in particular and the standard of work it provided is accepted, (the Tribunal sees no reason not to accept it), there is nothing to suggest that the dispensation sought will provide anything worse and will conceivably be as good as, or better, than encountered previously.
- 29 Even though the Tribunal has determined that it is appropriate to dispense with compliance with the consultation requirements this does not prejudice the future rights of any leaseholder to challenge the reasonableness of any costs incurred in respect of the relevant works

under Section 27A Landlord and Tenant Act 1985 relating to the service charges for the year(s) in question.

- 30 In the circumstances the Tribunal is satisfied that it is reasonable to dispense with the requirements to comply with Section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements)(England) Regulations 2003.

J R RIMMER (Tribunal Judge)
1 February 2024