



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

Case References : **MAN/00BL/LSC/2023/0040
MAN/00BL/LDC/2023/0033**

Property : **Provincial House, Nelson Square, Bolton BL1
1AJ**

Applicant : **Provincial House Bolton Limited**

Respondents : **Various Residential Long Leaseholders**

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

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member J Faulkner**

Date of Decision : **9 January 2024**

DECISION

Order

1. The Tribunal determines as follows:
 - (1) that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the roofing works at the Property; and,
 - (2) in accordance with section 19(2) of the Landlord and Tenant Act 1985, to the extent that the relevant costs are to be incurred, no greater amount than £150,000 (plus VAT) is reasonable to be charged as service charge.

Background

2. By applications dated 28 April 2023, (“the Applications”), the Applicant applied to the Tribunal for determinations under the following sections of Landlord and Tenant Act 1985, (“the 1985 Act”):
 - (1) section 20ZA: for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together “the Consultation Requirements”), in respect of the undertaking of works to the roof of the Property, (“the Works”);
 - (2) section 27A: as to the reasonableness and/or liability to pay service charges in respect of “relevant costs” relating to the Works.
3. The Respondents are the individual residential leaseholders of apartments at the Property.
4. Directions dated 25 September 2023, (“the Directions”), were issued to the parties.
5. A statement of case had been submitted on behalf of the Applicants, (“the Statement of Case”), at the same time as the Applications. A copy of a lease dated 24 November 2015 in respect of an apartment at the Property was attached to the Statement of Case, (“the Lease”).
6. No submissions were received from any of the Respondents.
7. The Directions stated that the Applications would be determined by the Tribunal “on the papers” in the absence of a request for a hearing from any of the parties. No request was received.
8. The determination of the Applications was scheduled for determination on a date after 13 November 2023.
9. No inspection of the Property was undertaken by the Tribunal.

Evidence

Applicant's submissions

10. The Applicant has responsibility for the management of the Property in accordance with the terms of the Lease. This includes, inter alia, the duty to insure the Property.
11. According to the Statement of Case:
 - (1) on 12 December 2022, the Applicant renewed the insurance at the Property;
 - (2) due to the level of the premium, the insurer required a survey of the Property to be carried out;
 - (3) the survey was carried out on 9 February 2023;
 - (4) a copy of the survey report is attached to the Statement of Case and included the following requirement:
 - (5) *Within 90 days the roof covering is to be renewed to a watertight condition and same is to be confirmed to Underwriters.*
 - (6) quotes were sought from 3 roofing contractors towards the end of 2022 and are attached to the Statement of Case as follows:
 - (a) NFRC: £140,000 + VAT with a 5 year guarantee;
 - (b) A. Deakin Developments: £190,000 + VAT;
 - (c) Elemco Limited: £150,000 + VAT with a 15 year guarantee;
 - (7) the Applicant chose Elemco Limited, ("Elemco"), principally because of the length of guarantee offered;
 - (8) Elemco indicated that the works would take around 40 days to complete and that if the Works were not commenced by 27 February 2023, there would be a delay until after the end of March 2023;
 - (9) for the Applicant to go through the s20 consultation process ran the risk of failing to comply with the insurer's requirement for the Works to be completed within 90 days; the carrying out of the Works was urgent and compliance with the Consultation Requirements "would not be feasible";
 - (10) reference is made to the Supreme Court's decision in *Daejan v Benson* [2013] UKSC 14 in connection with the tribunal's approach to dispensation applications;
 - (11) the Applicant considers relevant consideration to be:
 - (a) that, even if a consultation process had been undertaken, it is likely that Elemco would still have been the preferred contractor; and,
 - (b) as a full replacement of the roof was required by the insurers, it is unlikely that any leaseholder's observations would have made a difference to the scope of the Works.

Respondents' submissions

12. No submissions were received from any of the Respondents.

Law

Dispensation – section 20ZA

13. Section 20ZA(2) of the 1985 Act defines a qualifying long term agreement as “an agreement entered into, by or on behalf of the landlord...for a term of more than twelve months”.

14. Section 20 of the 1985 Act states:-

“Limitation of service charges: consultation requirements

Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited.....unless the consultation requirements have been either:-

- a. complied with in relation to the agreement, or
- b. dispensed with in relation to the agreement by the First Tier Tribunal

15. Section 20(3) of the 1985 Act provides that section 20 “applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount”. Paragraph 6 of the Regulations provides that the “appropriate amount” is “an amount which results in the relevant contribution of any tenant being more than £250”.

16. Section 20ZA(1) of the 1985 Act states:-

"Where an application is made to a 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."

Reasonableness and/or liability to pay service charge – section 27A

17. Section 27A(1) of the Landlord and Tenant Act 1985, (“the 1985 Act”), provides:

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) *the person by whom it is payable,*
- (b) *the person to whom it is payable,*
- (c) *the amount which is payable,*
- (d) *the date at or by which it is payable, and*
- (e) *the manner in which it is payable.*

18. The Tribunal is “the appropriate tribunal” for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
19. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:
20. *... an amount payable by a tenant of a dwelling as part of or in addition to the rent–*
- (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord’s costs of management, and*
- (b) *the whole or part of which varies or may vary according to the relevant costs.*
20. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:
- Relevant costs shall be taken into account in determining the amount of a service charge payable for a period–*
- (a) *only to the extent that they are reasonably incurred, and*
- (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*
21. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:
- the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

Reasons

General

22. The Tribunal notes as follows:
- (1) the Lease includes the following provisions:
- (a) “Retained Parts” is defined as including “the structure, walls, foundations and roofs of the Building”;
- (b) under Clause 3.1.2 of the Lease, the Tenant agrees to pay the Service Charge (as defined in Schedule 5);
- (c) under Clause 4.1 of the Lease, the Applicant agrees “to use its reasonable endeavours to carry out the Services...”;

- (d) “Services” are defined in Schedule 5 and include “keeping the Retained Parts in good and substantial repair and condition and properly maintained”
- (2) the Applicant’s Statement of Case does not make it clear whether the Works have been undertaken;
- (3) there is no explanation of the discrepancy between the amount of £150,810.96 plus VAT stated to be the amount of the Elemco quote in paragraph 14c of the Statement of Case and the amount of £150,000 plus VAT in the Elemco quote attached to the Statement of Case;
- (4) the insurer’s report states that the Works should be completed by “2023/05” which the Tribunal assumes to mean by the end of May 2023.

Dispensation – section 20ZA

- 23. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the rationale for a consultation exercise, namely, to ensure that leaseholders are protected from paying more than would be appropriate.
- 24. The Tribunal is satisfied as follows:
 - (1) the Works comprise “qualifying works” requiring compliance by the Applicant with the Consultation Requirements, in the absence of dispensation;
 - (2) that, contrary to the Applicant’s assertion that compliance “would not be feasible”, it appears that there would have been sufficient time for the Applicant to follow the consultation process and meet the insurer’s requirements;
 - (3) the Tribunal nonetheless accepts that there was an urgency in the undertaking of the Works including, without limitation, the need to ensure that nothing was done to vitiate the insurance on the Property; and,
 - (4) there is no evidence of any financial prejudice to the Respondents; and,
- 25. The Tribunal therefore concludes that it is reasonable to dispense with the Consultation Requirements.

Reasonableness and/or liability to pay service charge – section 27A

- 26. It is not clear to the Tribunal whether the “relevant costs” the subject of the s27A Application are costs within section 19(1) of the 1985 Act (where costs have been incurred) or within section 19(2) of the 1985 Act (where the costs are to be incurred).
- 27. To the extent that the relevant provision is section 19(1) of the 1985 Act, the Tribunal notes that there is no detailed evidence as to the nature/scope/technical specification of the Works undertaken, no evidence that the Works have been carried out to a

reasonable standard, as required under section 19(1)(b) of the Act, and no evidence of the issue of the guarantee.

28. In such circumstances, the Tribunal is unable to make a determination as to reasonableness.
29. To the extent that the relevant provision is section 19(2) of the 1985 Act, the Tribunal determines that, based on the evidence of the three quotes obtained and on the Applicant's stated rationale for choosing Elemco, (principally because of the availability of the 15 year guarantee), the Tribunal is satisfied that no greater amount than £150,000 plus VAT (together with the 15-year guarantee) is reasonable, subject as provided in section 19(2).