



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

**Case Reference** : **MAN/OOBQ/LDC/2023/0014**

**Property** : **Hillhouse Court Castleton Rochdale OL11 3JT**

**Applicant** : **Onward Homes Limited**

**Respondent** : **Various (see list attached)**

**Type of Application** : **s20ZA Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr John Murray LLB  
Ms. Susan Latham MRICS**

**Date of Decision** : **23 August 2023**

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**DECISION**

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## **DECISION**

The application for dispensation from consultation under s20ZA Landlord and Tenant Act 1985 is granted.

## **INTRODUCTION**

1. The Applicant applied to the Tribunal on the 3<sup>rd</sup> February 2023 for an order for dispensation with consultation required under s20ZA of the Landlord and Tenant Act 1985 for work in connection with door replacements to 13 residential bungalows at Hillhouse Court Castleton Rochdale OL11 3JT ("the Premises").

## **THE PROCEEDINGS**

2. Directions were made by a Legal Officer on the 15<sup>th</sup> June 2023 for the Applicant to file and serve bundles of all documents within 21 days of the directions. Any Respondents who opposed the application were invited to send statements in reply. In addition the Respondents were invited to indicate whether they wished to participate in the proceedings or not.
3. A Tribunal was appointed. Neither the Applicant nor any of the Respondents requested an inspection or a hearing, and the Tribunal convened to make this determination. *None of the Respondents indicated any intention to object.*

## **THE APPLICATION**

4. The application made under s20ZA Landlord and Tenant Act 1985 related to works required urgently following a report obtained by the Applicant from surveyors relating to works to the front and rear UPVC doors of 13 residential bungalows at the Premises.
5. The Applicant did not envisage that the Respondents would suffer any prejudice owing to consultation not being carried out.

## **THE RESIDENTIAL LEASES**

6. The Applicant did not provide a sample of any of the leases. The Tribunal was unable to consider whether the lease provided for the Applicant to replace doors to the Premises. This did not prevent the Tribunal making a determination under s20ZA.

## **THE LAW**

7. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 and s20ZA Landlord and Tenant Act 1985 which read as follows:

### **s27A Liability to payable service charges: jurisdiction.**

(1)An application may be made to an 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.

(2)Subsection (1) applies whether or not any payment has been made.

(3)An application may also be made to an appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant, .

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .

(c) has been the subject of determination by a court, or .

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

## **s20ZA 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

## **SUBMISSIONS**

### **THE APPLICANT'S STATEMENT OF CASE**

8. The Head of the Applicant's Home Ownership Team Natalie Lewis filed a statement of case and supporting documents dated 5 July 2023. That statement confirmed that the Applicant is the Landlord and Freeholder of the Premises.

9. The application affected thirteen residential bungalows in the Rochdale area.

10. The Applicant had originally served a section 20 notice on 23<sup>rd</sup> July 2021 notifying residents of their intention to upgrade doors and windows to provide enhanced security performance as defined by the Police. The existing UPVC doors had exceeded their life expectancy and a number of residents had experienced problems with locking mechanisms. The work

- was tendered in September 2021 but only one bid was received. The tender was deemed by the Applicant as not compliant with section 20.
11. The Applicant re-tendered the works in May 2022; again only one bid was received from a current contractor already working for the Applicant.
  12. The Applicant had struggled to attract more bids owing to Contractors still recovering post Pandemic.
  13. On 26<sup>th</sup> July 2022 the Applicant submitted a stage 2 notice. The Applicant received only one observation, objecting because only one quote had been received and the cost was excessive.
  14. On the 3<sup>rd</sup> February 2023 the Applicant wrote to all the Respondents advising them they would proceed with the works and seek dispensation under section 20. Again, the Applicant received only one observation, objecting because only one quote had been received and the cost was excessive.
  15. The Applicant determined to proceed with the work and apply for dispensation as the contractor of the one tender bid received would not be able to indefinitely hold their cost due to price rises of materials.
  16. The total cost of the works was £31,880.61 which broke down to £2,452.35 per unit.
  17. The Applicant confirmed that the reserve funds would be used towards payment and they were of the view that no prejudice would ensue to the Respondents.

## **THE RESPONDENTS**

18. The Respondents were invited to notify the Tribunal if they objected to the application. No objections were filed.
19. The Applicant did produce in the bundle a summary of the objection from one leaseholder who felt the price of a door was excessive, and they should have had more input into the choice and there had only been one contractor offered.

## **THE DETERMINATION**

20. The only issue for the Tribunal to consider is whether it was reasonable to dispense with consultation requirements, and not whether the service charges for the works in question were reasonable and/or payable.

21. The Tribunal was told that the work was required in order to make the Premises secure, as the doors were at the end of their lifespan .In order to allow the Premises to continue be occupied, there was a need to procure the works quickly given the only contractor that had tendered would not be able to hold the tendered price due to the rise in material costs.
22. 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.
23. 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.
24. 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.
25. The Tribunal took into account that none of the leaseholders objected to the application; no prejudice to any of the leaseholders had been identified, and there was no reason not to grant unconditional dispensation.
26. Any perceived prejudice that a leaseholder was concerned with might be reviewed by a future Tribunal pursuant to s19 Landlord and Tenant Act 1985.
27. The application for dispensation under s20ZA is granted.

**Tribunal Judge  
John Murray**

23 August 2023