



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

Case Reference : **MAN/00BW/LDC/2015/0010**

Properties : **All leasehold properties within
the Applicant's housing portfolio**

Applicant : **Adactus Housing Group**

Representative : **N/A**

Respondents : **The residential leaseholders of
the Properties**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge J Holbrook (Chairman)
Judge L Bennett**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **17 June 2015**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the proposed qualifying long term agreement for the provision of buildings insurance and related services in respect of the Properties.

REASONS

Background

1. On 13 April 2015 an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by Adactus Housing Group and concerned all of the leasehold properties within the Applicant’s rented housing portfolio. This is understood to include several hundred flats and houses (“the Properties”). The Respondents are the individual tenants of the Properties.
3. Dispensation from the consultation requirements is sought in relation to a qualifying long term agreement which the Applicant proposes to enter into for the provision of buildings insurance and related services in respect of the Properties. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. On 5 May 2015 Judge Bennett issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties on 17 June 2015 to determine the application. Objections to the application were received on behalf of five tenants of Properties at Tower Grove in Leigh and two tenants of Properties at Burnleigh Court in Bolton.
5. The Tribunal did not inspect any of the Properties.

Grounds for the application

6. The Properties are currently insured by the Applicant by means of a block buildings insurance policy. Cover under that policy will end on 30

September 2015 and the Applicant proposes to enter into a new agreement for the provision of buildings insurance and related services in respect of its entire housing stock. It is proposed that the new agreement will be of three years' duration. The Applicant contends that an arrangement of this sort will be the most economically advantageous means of procuring insurance for its Properties, with consequent savings in service charges for its residential tenants.

7. To this end, the Applicant intends to begin a tendering process in the near future via the Official Journal of the European Union. The Applicant argues that dispensing with the consultation requirements will expedite the process of negotiation and appointment of insurers as part of the tender process.

Law

8. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" 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.

9. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any ... qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either—
(a) *complied with in relation to the works ... or*
(b) *dispensed with in relation to the .. agreement by the appropriate tribunal.*

10. Subject to prescribed exceptions which are not relevant to the present case, a "qualifying long term agreement" for this purpose is an agreement entered into by or on behalf of a landlord or a superior landlord for a term of more than twelve months (section 20ZA(2) of the Act), and section 20 applies to such an agreement if relevant costs incurred under the agreement in a twelve month period result in the relevant contribution of any tenant, in respect of that period, being more than £100.00 (section 20(4) of the Act and regulation 4 of the Regulations).

11. Section 20ZA(1) of the Act provides:

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 long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

12. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements.

Conclusions

13. The Tribunal must decide whether it is reasonable for the Applicant to enter into the agreement without first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to enter into a qualifying long term agreement – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about such agreements before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
14. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why entering into the agreement cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for the landlord to be able to act swiftly to conclude agreements which are commercially prudent and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before long term commitments are entered into which could have a significant impact upon them. The Tribunal must consider whether this balance favours allowing the landlord to enter into the commitments in question speedily (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in securing the contractual agreement). The balance is likely to be tipped in favour of dispensation in a case in which there is a good reason why the landlord needs to be able to enter into the agreement speedily, or where all the leaseholders consent to the grant of a dispensation.
15. In the present case, we accept that there is a good reason why the landlord may need to enter into a qualifying long term agreement sooner than would be possible if the consultation requirements were complied with in full. Compliance with those requirements would potentially delay the implementation of new insurance arrangements beyond 1 October 2015 and, in turn, this would potentially have adverse financial consequences for the Applicant (and, ultimately, for those of its tenants who pay service charges).
16. We note that a small minority of tenants have voiced an objection to dispensation being granted. Some tenants consider that their properties should be separately insured, rather than being insured as part of a block policy. However, rights and responsibilities in regard to who should effect insurance, and in what manner it should be effected, derive from the provisions of the relevant lease. The Tribunal is not required to make any findings in that regard in the context of the

application for dispensation (the outcome of which does not alter those underlying rights and responsibilities in any way).

17. Other tenants express concern that the proposed agreement may fail to secure value for money because it will endure for three years rather than being reviewed annually. In addition, there is a concern that individuals who have “shared ownership” leases must not be asked to subsidise the cost of insuring the Applicant’s remaining housing stock. Whilst these may be valid concerns, they are not relevant to the question whether dispensation from the consultation requirements should be granted: the grant of dispensation does not detract from the right of any tenant to challenge whether service charge contributions resulting from the agreement are payable and/or reasonable.
18. Taking all of these matters into consideration, we conclude that the balance of prejudice in this case favours granting dispensation from the consultation requirements. We also note that there has already been partial compliance with the consultation requirements anyway: the Applicant has written to its tenants to inform them of its intention to enter into the new agreement and has invited them to make observations in this regard.
19. However, we again emphasise that the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of any anticipated service charge contributions resulting from the proposed agreement are likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.