



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

Case reference : **MAN/00CA/LDC/2022/0009**

Property : **Various Properties in Bootle, Crosby & Maghull**

Applicant : **One Vision Housing Limited**

Representative : **Trowers Hamlins LLP**

Respondent : **Various Residential Long Leaseholders**

Type of application : **Dispensation with statutory consultation requirements under s.20ZA Landlord and Tenant Act 1985**

Tribunal member(s) : **Tribunal Judge Jodie James-Stadden, Tribunal Judge Leslie Brown, Tribunal Member Joe Fraser**

Date of decision : **22 August 2022**

DECISION

Decision of the Tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.

The Application

1. The application is brought by One Vision Housing Limited (“the Applicant”), the freehold owner of a significant amount of housing stock across Bootle, Crosby and Maghull which is comprised of primarily what the Applicant terms its ‘tenanted general needs housing stock’, amongst which the properties which are the subject matter of the application are ‘pepper potted’. These latter properties were originally part of the ‘tenanted general needs housing stock’ but have, over time, been purchased pursuant to the ‘right to buy’ scheme and are now held by various long leaseholders.
2. The respondents are the leaseholders of the ‘pepper potted’ properties, who were identified at Appendix B in the application submitted to the Tribunal (“the Respondents”), with the properties in question being identified in Appendix A to the application.
3. The Applicant seeks dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) in respect of consultation requirements in relation to certain qualifying works, within the meaning of the Act (“the Application”). The Application is dated 16 February 2022.
4. The qualifying works are detailed in Appendix C to the Application but, in summary, comprise new roof coverings, including felt, battens, tiles, flashings, fascias, soffits, downpipes, repointing/rebuilding of stacks, re-launching, guttering and ancillary works and services.
5. These works are proposed as part of the Applicant’s capital major works programme on its stock, including the properties the subject of the Application. Surveys have been conducted confirming that these works are required pursuant to the Applicant’s obligations as landlord to keep those properties in good and substantial repair and condition.
6. The Applicant proposes to use its own internal contractor, Sovini Property Services (“SPS”), to carry out the required works and, as noted above, seeks dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) in respect of the consultation requirements on the bases that:
 - a. the most cost effective way to deliver the capital works programme is to use SPS, which will also be providing the works to the Applicant’s general needs stock;
 - b. SPS will deliver the works at prices lower than those offered nationally or regionally by other contractors for similar works;
 - c. using its in-house contractor will enable the Applicant to monitor the standard and quality of the works more closely;

- d. using SPS to deliver the entire programme of works avoids the need for separate contractors to be engaged for the ‘pepper potted’ properties, which would lead to confusion between contractors regarding, for example, site management, which of itself could lead to safety being compromised, and a duplication in costs for ancillary services onsite; and
 - e. the unpredictability with which properties are sold would result in the Applicant having to retender, and thus consult, frequently, leading to increased costs.
7. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper Determination

8. Directions were issued by Judge Holbrook on 04 May 2022.
9. Those directions provided, amongst other things, that the Applicant must within 21 days of the date of the directions, send electronically to the Tribunal, with a hard copy to each Respondent, a bundle of documents consisting of:
- a. the directions, with the reply form;
 - b. the Tribunal application form;
 - c. a statement of case explaining why the application had been made;
 - d. any correspondence sent to the leaseholders in relation to the works
 - e. detailed reasons for the urgency of the works and the consequences upon the leaseholders of any delay
 - f. any quotes or estimates for the proposed works and relevant reports; and
 - g. copies of any other documents the applicant sought to rely on in evidence.
10. The directions further provided that the Applicant must within 21 days of the date of the directions, prepare a digital, indexed and paginated second bundle, upload a copy of it to its website or document storage site, and that this second bundle must consist of:
- a. the directions, with the reply form;
 - b. the Tribunal application form;
 - c. a statement of case explaining why the application had been made;
 - d. detailed reasons for the urgency of the works and the consequences upon the leaseholders of any delay
 - e. any quotes or estimates for the proposed works and relevant reports; and
 - f. copies of any other documents the Applicant sought to rely on in evidence.
11. Still further, the directions provided that the Applicant must, simultaneously with complying with the above directions, send a covering letter to each Respondent with a link to the uploaded second bundle, which letter must state that a paper copy of that bundle would be provided to any

Respondent upon request, and that the Applicant must confirm to the Tribunal that this had been done and provide it with the link to the second bundle.

12. By email dated 26 May 2022, the Applicant confirmed to the Tribunal that it had complied with the aforesaid directions.
13. The directions also provided that any leaseholder who opposed the Application must within 21 days of receipt of the documents referred to at paragraphs 9 and 10 above complete and return the reply form attached to the directions and send it to the Applicant and Tribunal together with a statement in response to the Application and any documents and witness statements which they sought to reply on in evidence.
14. By email dated 20 June 2022, the Applicant confirmed to the Tribunal that it had telephoned the Tribunal and been informed that no responses had been received.
15. The directions provided that the Tribunal considered the matter to be one that could be resolved by way of submission of written evidence and stated that, if any party wished to make representations at an oral hearing, that party should inform the Tribunal office of this in writing within 42 days from the date of the directions.
16. No such request has been made and the Application has thus been determined by the Tribunal on the papers submitted by the Applicant.
17. The directions expressly state that the Application concerns only whether or not it is reasonable to dispense with the consultation requirements and does not concern the issue of whether any service charge costs resulting from any such works are reasonable or payable and that it will be open to the leaseholders to challenge any such costs charged by the Applicant.

The Law

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

‘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 or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.’
19. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state:

‘it seems to me that the issue on which the [Tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements’.

Findings of Fact

20. The Tribunal is satisfied:
 - a. that the Application was properly brought and that it is in proper form.
 - b. that the Applicant has complied with the directions of 04 May 2022 regarding service of the Application on the Respondents, provision to the Respondents of the link to the second bundle and the giving of notice to the Respondents that a hard copy bundle could be requested and would be provided on request; and
 - c. that no responses to the Application have been received.
21. The Applicant seeks dispensation from the consultation requirements as:
 - a. the works, which are qualifying works, are required by virtue of the Applicant’s legal obligations to the Respondents as landlord pursuant to the terms of the Respondents’ leases to keep their properties in good and substantial repair and condition; and
 - b. it seeks to provide those works through its own inhouse contractor, without engaging in a consultation exercise.
22. The Tribunal notes the Applicant’s evidence, in the form of the report from RAND Associates Consultancy Services Limited (Appendix D to the Application), which provides national and regional comparison figures and states that SPS operates at competitive rates which are below average rates.
23. The Tribunal is satisfied that, by using its own internal contractor, the Applicant is better able to monitor the standard and quality of the works, with the assistance of its ‘Customer Voice Strategy’ which provides for panels and service review groups to operate as an additional quality check on services provided.
24. The Tribunal notes that using SPS to deliver the entire capital works programme will avoid the need for separate contractors to be engaged for the ‘pepper potted’ properties, which would lead to confusion between contractors on site, the possibility of safety being compromised and a duplication in costs for ancillary onsite services onsite.
25. The Tribunal accepts that, were the Applicant to be required to consult regarding the works, the overall cost to the Respondents would increase.
26. In the absence of any submissions from any Respondent objecting to the works or to the Application, or contending that granting the Application would result in prejudice, the Tribunal finds no evidence that the

Respondents would suffer prejudice in the event that the Application for dispensation from the consultation requirements were granted.

Determination

27. In the circumstances set out above, the Tribunal considers it reasonable to dispense with the consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord and Tenant Act 1985.
28. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

Tribunal Judge Jodie James-Stadden
22 August 2022

Rights of appeal

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.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application 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.

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 grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).