



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

Case reference : **CHI/43UE/LDC/2032/0095**

Properties : **Various properties of Town and Country Housing**

Applicant : **Town and Country Housing**

Representative : **Birketts LLP**

Respondents : **The Leaseholders of the Properties**

Type of Application : **Application for the dispensation of consultation requirements pursuant to S.20ZA of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge H Lumby
Mr C Davies FRICS
Ms T Wong**

Venue : **Havant Justice Centre**

Date of Hearing : **7 December 2023**

Date of Decision : **11 December 2023**

DECISION

Decision of the Tribunal

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act) on condition that none of the costs of the application are recharged to the Respondents but instead are borne by the Applicant.

The background to the application

1. Rosebery Housing Association (“RHA”) and the Applicant merged on the 4 April 2023. The merger involved a transfer of engagements pursuant to s.110 Co-operative and Community Benefit Societies Act 2014 whereby the assets of RHA (approximately 2,700 homes) were transferred to the Applicant (which already owned approximately 10,000 homes) to form a combined stock of 12,700 homes.
2. Prior to the merger, the Applicant had an existing publicly procured framework agreement for responsive repairs and planned maintenance through a collection of public authorities called the South East Consortium. It had subsequently carried out a procurement process to identify a contractor to carry out such works on its existing portfolio. The lowest bid was received from George Jones (Contractors) Limited (“George Jones”) and a contract entered into with that contractor on 11 August 2020 for an initial period of three years. This was extended in August 2023 for an additional three years. George Jones charges by reference to fixed menu of costs which the Applicant argues is substantially cheaper than the value that would be obtained on a case by case basis. That menu of costs was increased by 7% on extension in August 2023.
3. It is accepted that the contract with George Jones is a qualifying long term agreement for the purposes of section 20 of the Landlord and Tenant Act 1985.
4. The Applicant considers that the prices charged by George Jones are a benefit to its leaseholders as it ensures that charges are lower than might otherwise be the case. Use of one contract without the need to go through a consultation on contractor identity on a regular basis provides the Applicant with a degree of convenience. As a result, it wishes to extend the George Jones contract to cover the properties acquired by merger from RHA.
5. Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) (the “Consultation Regulations”) requires a landlord to consult with its leaseholders prior to the entry into a contract such as that entered into with George Jones. A consultation of this type did in fact take place prior to their initial appointment. Extending the contract to cover the Properties would

therefore require a consultation with the Respondents (as leaseholders of the Properties) but that is not possible as the contract has already been let. The Applicant is therefore applying for dispensation from the requirement to carry out this consultation.

6. There are 467 leaseholders within the Respondents across multiple properties within the Epsom area. The Applicant confirmed that they all received notice of this application by way of a letter from the Tribunal and a 104 page bundle. No earlier warning or explanation was issued by the Applicant and a short time period was given to the Respondents to object, given the Applicant's desire to fast track the case.
7. Seventeen objections have been received to the proposed dispensation. These objections generally related to the process followed, the desire to be able to nominate contractors, concerns about inappropriate works being carried out or charges levied and concerns about compliance with the Public Contract Regulations 2015.
8. The Tribunal did not inspect the Properties as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
9. The hearing was held in person. Mr Clive Adams of Birketts LLP appeared for the Applicant, with Mr Matthew Heathcoat from the Applicant in attendance; Mr Heathcoat had provided a witness statement. Miss Laiping Man appeared as one of the Respondents; she made it clear that she was there in her personal capacity as a leaseholder and did not speak on behalf of the other Respondents.
10. The documents that were referred to are a bundle of 277 pages, the contents of which we have recorded. Mr Adam also provided a written submission after the hearing had closed which he had earlier supplied to Miss Man. A copy of Rule 72 of the Public Contract Regulations 2015 was provided to the Tribunal by Miss Man.
11. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Consultation Regulations Schedule 2) in relation to the extension of the George Jones contract to cover the Properties.
12. Section 20ZA relates to consultation requirements and provides as follows:

"(1) Where an application is made to a leasehold valuation 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.*

*....
(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.”

13. If dispensation is granted to enter into a qualifying long term agreement, that does not of itself remove the protections available to leaseholders. Schedule 3 of the Consultation Regulations means that the landlord will still have to consult with leaseholders in relation to proposed qualifying works. It will be required to have regard to observations made in relation to the proposed works or the landlord’s estimated expenditure on them. Furthermore, the protections in section 19 of the 1985 Act will remain – these allow landlords only to recover service charge costs to the extent that they are reasonably incurred and any works are of a reasonable standard.
14. As a number of the objectors requested a hearing for the case, the Tribunal proceeded on that basis rather than as a paper determination.

The issues

15. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements in relation to the extension of the George Jones contract to cover the Properties. This application does not concern the issue of whether or not the resultant service charges will be reasonable or payable. It does not dispense with the requirement of the Applicant to comply with Schedule 3 of the Consultation Regulations.

16. The Applicant accepted that communications with leaseholders could have been better and apologised for any shortcomings in that regard. It argued that it was reasonable to grant a dispensation because there was no resulting prejudice to leaseholders. Relying on the judgment of the Supreme Court in the case of *Daejan Investments Limited v Benson [2013] UKSC 14*, it argued that the obligation to consult was to protect lessees from paying for inappropriate works or paying more than would be appropriate. The Respondents would be protected in both these cases here, from inappropriate works by the obligation to comply with Schedule 3 of the Consultation Regulations and from inappropriate costs by the competitive rates obtained from George Jones and the ability to challenge the levels of cost and the workmanship under section 19 of the 1985 Act.
17. Miss Man raised a number of questions of the Applicant. She was concerned that varying a contract may not be permitted by Rule 72 of the Public Contract Regulations 2015. Rule 72(b) did allow some changes but the Applicant was unable to confirm definitively whether those exceptions would apply. It argued that no change was required in any event. However, Miss Man contended that it would need changing as the George Jones contract referred to works to properties “in or around Kent” but Epsom was some way from Kent. She appreciated that this was not a relevant consideration for the Tribunal but nonetheless found it bizarre that a Tribunal could allow a dispensation when that could lead to a contract being operated in breach of the Public Contract Rules 2015.
18. Other objections were contained in the bundle although no other objectors attended the hearing. Objections were a combination of leaseholders wanting to be involved in discussions before works were undertaken or costs incurred on the one hand and concerns in relation to the lack of explanation by the Applicant and the limited time given to respond.
19. Communications with leaseholders was discussed at the hearing. The Applicant has sought to have the application for dispensation fast tracked so as to allow the contract with George Jones to be extended to the Properties as quickly as possible. In fact, there was no urgency in relation to the application as normal consultations are being carried out for qualifying works and the intention is for the George Jones contract extension to commence in April 2024. The Applicant was reminded by the Tribunal that the fast track procedure should not be followed for routine matters.
20. In addition, by only forwarding on the Tribunal letter and the accompanying bundle, leaseholders were unnecessarily concerned about what was happening and the timetable being adopted. The Applicant writing to the leaseholders at the start of the process to explain its intentions would in the Tribunal’s view saved a lot of unnecessary angst.
21. The Applicant confirmed that it would not be seeking to recover its costs of this process from the Respondents and would accept a condition to that

effect. It did not otherwise feel any conditions to the dispensation were appropriate.

Findings

22. Having read the evidence and submissions from the parties, listened to their submissions to the hearing and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.
23. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Consultation Regulations 2003 require a landlord planning to enter into an agreement for a term of more than 12 months to consult the leaseholders in a specified form.
24. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
25. In the case of *Daejan Investments Limited v Benson [2013] UKSC 14*, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
26. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is: ^[1]“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and

ii. in what way their rights under (b) above have been prejudiced as a consequence.

27. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
28. We looked at whether there is a prejudice in relation to future works. The Applicant will still have to consult in relation to any such works, in accordance with Schedule 3 of the Consultation Regulations. Although the Respondents will not have an express right to nominate contractors, they will be able to make observations on the necessity for works and the cost of them; this will include an ability to propose that another party carries out the works. It was likely however that proceeding with George Jones would save the Respondents money compared to other contractors and so the proposed arrangements would bring them an advantage rather than prejudice. Furthermore, the Respondents will have their rights pursuant to section 19 of the 1985 Act in relation to the cost and quality of work. Overall, the Tribunal finds no discernible prejudice either in relation to the appropriateness of future works or their cost.
29. Concerns were also raised by objectors about the process the Applicant had followed, especially in relation to the lack of explanation and time. The Tribunal considered whether this conduct prejudiced the Respondents. It finds that, whilst the Applicant could have done much better in this regard, this was not such as to amount to prejudice to the Respondents. The Tribunal does, however, hope that lessons in communication will have been taken on board by the Applicant.
30. Finally, the Tribunal considered the points raised by Miss Man in relation to the Public Contract Regulations 2015. The Tribunal noted that the contract with George Jones would not need to be changed as a result of the addition of the Properties. Costs were fixed and no account was taken of travel times to Epsom. The fact that the Applicant had 10,000 units within the contract at present and would be adding an additional 2,700 meant that all in probability a change would fall within the requirements that costs increased by less than 50% whilst avoiding the unnecessary cost of a new procurement. In any event, compliance with those Regulations was not a relevant consideration for the Tribunal in relation to this application; no prejudice to the Respondents has been identified as a result.
31. The Tribunal is of the view that no credible case of prejudice to any of the leaseholders of the Properties by the granting of the dispensation has been identified by the Respondents. Accordingly, taking into account the evidence before it, it determines that it is reasonable to allow dispensation in relation to the extension of the George Jones contract to cover the Properties.

32. Consideration was also given by the Tribunal to the question of costs. The Applicant's statement that it would not look to recharge costs to the Respondents and would accept a condition to that effect was noted. The Tribunal also noted that the Applicant's approach to the Respondents in relation to this application, especially in relation to communications, could have been better. Accordingly, the Tribunal determines that in giving the dispensation sought by the Applicant, that should be on the condition that no costs of the application were charged to the Respondents.

33. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.