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

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| **Case Reference** | **:** | **MAN/00CA/LDC/2020/0033** |
| **Property** | **:** | **Various Sites across Sefton, Liverpool and Merseyside** |
| **Applicants** | **:** | **One Vision Housing Limited (represented by Trowers and Hamlins LLP)** |
| **Respondent** | **:** | **Various Leaseholders** |
| **Type of Application** | **:** | **Section 20ZA Landlord and Tenant Act 1985** |
| **Tribunal Members** | **:** | **(Judge) Mr Phillip Barber** |
| | **:** | **(Valuer) Mr John Faulkner** |
| **Hearing Date** | **:** | **19 April 2021** |
| **Date of Decision** | **:** | **12 May 2021** |

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**DECISION AND REASONS**

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1. The application for dispensation from the requirements of section 20 of the Landlord & Tenant Act 1985 is granted in accordance with the following paragraph.

2. Dispensation is granted from the following requirements:

    a. That the Landlord must obtain at least two estimates for the work,

    b. That one of the estimates must be from a person unconnected to the Landlord;

    c. That a notice of proposal is served (second stage notice) with two estimates;

    d. That a notice of the landlord's reasons for entering into a contract for qualifying works must be served.

REASONS

3. The Applicant is the freehold owner of a significant amount of housing stock in Sefton the majority of which are occupied by “short-term” tenants are subject to the repairing covenant in section 11 of the Landlord and Tenant Act 1985, which the Applicant calls its “general needs stock”. “Pepper potted” amongst that housing, are approximately 81 properties held under a long lease by various long leaseholders. These properties would originally have formed part if its “general needs stock” but have been purchased under the right to buy.

4. A list of all leasehold properties is contained in the Applicant’s bundle at Appendix A on pages 21 to 24. Appendix B to the application details the names of each of the 81 leaseholders who form the Respondents to this application.

5. In accordance with its ongoing repairing obligations under the terms of section 11 of the Landlord and Tenant Act 1985 (for the “short-term” tenants) and under the various provisions in the leases to keep in repair (for the respondents to this application) the Applicant has determined the buildings and schemes which include the long leasehold properties require major works. The application summarises these works as limited to the provision of new roof covering, including the provision of felt, battens, tiles, flashings, fascias, soffits, down pipes, repoint/rebuilding of stack and any reflaunching and gutters (along with any ancillary works and services). Appendix F to the application provides a more detailed list of the works within scope of the application.

6. The Applicant intends to use its own internal contractor for the purposes of these works, Sovini Construction Limited (at the time of the application this organisation was called Carroll Building) and for this purpose seeks to apply for dispensation from some of the requirements under section 20 of the Landlord and Tenant Act 1985 and in particular in relation to the following:

    e. That the Landlord must obtain at least two estimates for the work,

    f. That one of the estimates must be from a person unconnected to the Landlord;

    g. That a notice of proposal is served (second stage notice) with two estimates;

    h. That a notice of the landlord's reasons for entering into a contract for qualifying works must be served.

7. The Applicant's reasons for requesting dispensation are set out in the Application and are identified under various headings. These can be paraphrased as relating to the costs savings associated with using its inhouse contractor and the ability of the Applicant to "quality control" the standard of works, by facilitating the its monitoring and the promotion of excellent customer services.

8. Added to this, and relating to the issue of detriment, the Applicant argues that if Sovini Construction were not to be awarded the contract, due to the "pepper potted" nature of the long leasehold properties there would be a number of insurmountable obstacles relating to confusion (i.e. who was doing what and for whom); safety may be compromised because it would be unclear who has overall site management; duplication of costs for ancillary services such as cabins, scaffold, toilets etc and the increased costs of management. The Applicant also points out that even if a separate tender is negotiated with another contractor for the purpose of some of the leasehold flats, the unpredictability of the sale of the flats will mean a requirement to consult and frequently to ensure accuracy.

9. The Applicant points out that a Notice of Intention was sent to the various leaseholders in March 2019 and November 2019 before the Applicant realised that consultation would be detrimental, but no nominations were made. Subsequently Notices of Proposal were sent in February 2020 and this elicited what appears to be a small number of responses.

    The Leaseholders' responses

10. Of the 81 leaseholders notified of the application, a number objected to the application and their written responses are paraphrased below:

a. Sandra Martin – the roof doesn't need replacing and the Applicant has failed over the years in maintaining the outside of the properties but she acknowledges that the rain goods need replacement, such as the down spouts and pointing. Ms Martin also comments on the proposed costs of the works as being too high. Ms Martin did not attend the hearing;

b. Jane Keatley – the works are too expensive and unnecessary which is causing anxiety. Ms Keatley attended the hearing and was represented by Mr Hough;

c. John Hall – the application is fraudulent and the works are too expensive.

d. R Millington – the works are too expensive. Mr Millington attended the hearing;

e. Alan Scott – set out his arguments in a detailed letter stating that he has no faith in the ability of the Applicant's contractors to carry out the works. The property does not require a new roof and the cost is going to be twice as expensive as if he organised the works himself. Mr Scott has obtained a quote for the replacement of his roof in the sum of £9240;

f. Irene Leppert – the works are expensive and should be the subject of independent quotes;

g. J A Day – the costs are more expensive than the market average and will make her financial situation worse and the works, carried out by the contractor in a neighbouring property, are of poor quality;

h. Amy Deakin – agrees with other observations already made and her property is not worth the £5-£7k investment for the costs of the roof.

11. At the hearing Mr Millington appeared and spoke for himself and the additional submissions he had sent to the Tribunal under cover of his letter of the 07 January 2021 (page 327 of the bundle); Mr Scott attended by telephone and spoke for himself and Mr Hough attended with Ms Keatley and spoke for the both of them, although Ms Keatley did say one or two things to the Tribunal in addition.

12. Each of the Respondents at the hearing maintained their position that the costs of the works are two high and that cheaper quotes could be obtained to do the same works to the roofs. As a result, there should be open and fair consultation so that other quotes can be obtained and comments made. Mr Scott pointed out that his flat is one of a block of 4 in a property that looks like a semi-detached house and as a result there should be no confusion in which contractor is undertaking which works. Mr Millington told us that he bought his flat as an investment in

his business as a buy-to-let landlord and maintained his position that he has no trust in One Vision. He told us that his company, "Dial-a-Handyman", should be allowed to tender for the works and he would be cheaper than Sovini Construction. All respondents echoed the view that they would struggle to find the money to carry pay for the works and Ms Keitley, in particular, became very tearful at the prospect of having to find over £5000 to cover the cost of works to her roof.

13. We took all of the observations, comments and submissions from the Respondents into account in our deliberations and arriving at our decision.

The Law

14. Unless dispensation is granted from some or all of the requirements to consult, Section 20 of the Landlord and Tenant Act 1985 limits the relevant contribution of a leaseholder to a fixed amount in relation to qualifying works. The consultation requirements are set out in the Service Charges (Consultation Requirements)(England) Regulations 2003 and provide for a series of steps a landlord must follow in relation to those works. Dispensation can be granted by this Tribunal from all or some of the consultation requirements under section 20ZA of the 1985 Act:

> "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…the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

15. There is no dispute that the proposed works are works which come within the scope of the consultation requirements and that ordinarily the Applicant should consult in accordance with the regulations.

16. We were also referred at the start of the hearing to the decision in Daejan Investments Limited v Benson [2013] UKSC 14, which whilst not entirely on point provides an indication as to the approach the Tribunal might take to the issue of prejudice.

Outcome

17. We carefully considered the points raised by the Respondents to this application, which, on the whole were complaints about the cost of the proposed works and the general view that were they to carry out the works themselves, the costs would be cheaper.

18. However, those arguments miss the point of this application. Each of the Respondents has the benefit of a long lease agreement with the Applicant in which the Applicant is required to provide services. These services include a responsibility for upkeep to the common parts of each of the buildings in which the respective properties are situated.

Allied to this responsibility towards long leaseholders, the Applicant also has a concurrent responsibility towards is "general needs" tenants for whom the Applicant is also required to "keep the structure and exterior in good and tenantable repair" (section 11 Landlord and Tenant Act 1985). If the Respondent were to have to consult in relation to any of these works, then we entirely accept that the overall costs would increase – probably significantly – and that that would result in a prejudice to all occupiers, both long leaseholders and short-term tenants. We are satisfied that that point must have been appreciated by the vary many long leaseholders who have chosen not to resist this application.

19. Authority for that view has been provided by the Applicant in the form of its comparison report produced at Appendix G of their bundle which we think demonstrated that for major works on such a significant scale, Sovini is able to carry out the works at a competitive rate – i.e. it provides "value for money".

20. We are also satisfied that having the Applicant's "inhouse" contractors carry out the works would make it easier to ensure that the works are of an appropriate and acceptable quality and standard. As pointed out by the Applicant in their statement of case, the relationship between One Vision and Carroll Build (Sovini) means that it is able to create incentives and prioritise "excellent quality and customer service" in circumstances where it would be impracticable in relation to external contractors. We also note that the Applicant has established a number of mechanisms whereby its customers (i.e. the tenants – both long and short) can feed into the quality process through the Empowerment Framework, reproduced in Appendix H of the Applicant's bundle.

21. Finally, we accept the point that the practical difficulties in having more than one contractor on site at any one point in time would be insurmountable at any reasonable cost. It seems to us that if Sovini were to be carrying out works on one part of a roof, with an independent contractor on another this would not only duplicate costs (scaffold etc) but would be confusing for contractors and make overall site management difficult.

22. The Respondents have provided no reasons, it seems to us, that they would be prejudiced by the granting of the application. As mentioned previously their main contention appears to be the worry that by utilising Sovini for the works, the overall cost to themselves will be significantly more. No reliable evidence has been provided for this claim, with the exception of a quote for works for Mr Scott's property at 143 Moorhey Road in the sum of £9240. However, we were unsure whether this included items such as scaffold (which would increase the costs significantly). Other than this, the only other evidence as to cost was from Mr Millington who told us (without giving any more details) that he could do the works cheaper himself.

23. However, those are not factors against granting dispensation which we think have any great weight. As we pointed out at the hearing, if the leaseholders are dissatisfied with the costs of the works then the Tribunal has jurisdiction to consider the payability of those costs under section 20A of the Landlord and Tenant Act 1985 and has jurisdiction to assess them as to reasonableness under section 19 of that Act.

24. For all of the above reasons, we decided that there is no prejudice to the Respondents to dispense with the consultation requirements and that the application should be granted.

Judge Barber

12 May 2021