



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

Case Reference(s) : **MAN/00BY/LDC/2022/0022**

Properties : **Various Residential Properties within the Applicant's housing portfolio**

Applicant : **The Regenda Group**

Respondents : **Various Residential Long Leaseholders and Shared Owners**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member H Thomas**

Date of Decision : **23 November 2022**

DECISION

Order

1. The Tribunal determines that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the Applicant's entry into a qualifying long term agreement in respect of insurance for the Properties.

Background

2. By an application dated 23 March 2022, ("the Application"), the Applicant applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, ("the 1985 Act"), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together "the Consultation Requirements"), in respect of the entry into a qualifying long term agreement in respect of insurance for the Properties.
3. The Respondents are the individual residential leaseholders/shared owners of apartments at the Properties.
4. Directions dated 8 June 2022, ("the Directions"), were issued to the parties, in response to which the Applicant submitted written representations.
5. No submissions were received from any of the Respondents.
6. The Directions stated that the Application would be determined by the Tribunal "on the papers" in the absence of a request for a hearing from any of the parties. No request was received.
7. The determination of the Application was scheduled for Thursday 6 October 2022.
8. No inspection of the Property was undertaken by the Tribunal.

Evidence

9. The Applicant has responsibility for the management of the Property in accordance with the leases which includes, inter alia, the duty to insure the Properties.
10. A first stage "Notice of Intention" letter was sent to the Respondents dated 29 November 2021 regarding the proposed tender process for insurance for the Properties following expiry of the existing insurance cover on 30 April 2022.
11. In response two observations were received from Respondents as follows:
 - 11.1 a request to be allowed to insure individually; and
 - 11.2 a request for more information about the extent of the insurance cover.

12. Information was subsequently received by the Applicant to the effect that only one bid had been received due to:
 - 12.1 the limited nature of the properties included in the tender proposal ie the leasehold and shared ownership stock only as opposed to the Applicant's whole portfolio; and
 - 12.2 some of the Properties requiring/being in the process of remedial cladding works, meaning that overall the Properties presented an unattractive risk for insurers.
13. As a result, the Applicant agreed with the existing insurer that there should be a 6 month extension to the existing policy at a "locked in" rate which would bring the insurance expiry date for the Properties into line with the rest of the Applicant's portfolio.
14. This information was shared with the Respondents via the online portal and a Stage 2 consultation letter was issued on 24 March 2022.
15. No observations were received from the Respondents.
16. The extension to the insurance policy took effect on 1 May 2022.
17. The Applicant stated its proposal to carry out a full open market tender for its entire portfolio, including the Properties, in the 2023/24 financial year.
18. None of the Respondents has made written submissions to the Tribunal in response to the Application.

Law

19. Section 20ZA(2) of the 1985 Act defines a qualifying long term agreement as "an agreement entered into, by or on behalf of the landlord...for a term of more than twelve months".
20. Section 20 of the 1985 Act states:-

"Limitation of service charges: consultation requirements

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 agreement, or
 - b. dispensed with in relation to the agreement by the First Tier Tribunal
21. Regulation 4 of the Regulations provides that s20 shall apply to a qualifying long term agreement if "...relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100".

22. Section 20ZA(1) of the 1985 Act states:-

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

Reasons

23. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the rationale for a consultation exercise, namely, to ensure that leaseholders are protected from paying more than would be appropriate.

24. The Tribunal noted the following:

- (1) the entry into the 6 month extension of the insurance policy appears to render it as a "qualifying long term agreement" requiring compliance with the Regulations (although it also notes that it appears that the Applicant had assumed compliance was necessary before the extension was agreed);
- (2) there is no evidence before the Tribunal that the relevant contribution of each tenant is in excess of £100; and,
- (3) there is evidence of compliance by the Applicant with the Regulations which may render the Application unnecessary in any event.

25. There is no evidence of any financial prejudice to the Respondents. In particular, the issues raised by the two responses to the Notice of Intention did not establish any such prejudice.

Determination

26. Based on the following assumptions:

- (1) compliance with the Regulations has not been made by the Applicant; and,
 - (2) the relevant contribution of each of the tenants under the qualifying long term agreement is in excess of £100 during the relevant period,
- the Tribunal concludes that, in accordance with Section 20ZA(1) of the 1985 Act, it is reasonable to dispense with the consultation requirements under s20 of the 1985 Act.

27. Nothing in this determination shall preclude consideration of whether the Applicant may recover by way of service charge from any of the Respondents any or all of their relevant contribution towards the cost of insurance during the relevant period or the costs of this Application should an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

Tribunal Judge C Wood

1 November 2022