

IN THE FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

IN THE MATTER OF SECTION 20ZA LANDLORD AND TENANT ACT 1985

AND THE MATTER OF VARIOUS SHARED OWNERSHIP LEASES

BETWEEN:-

(1) LEGAL AND GENERAL AFFORDABLE HOMES LIMITED

(2) LEGAL & GENERAL AFFORDABLE HOMES (AR) LLP

(3) LEGAL & GENERAL AFFORDABLE HOMES (SO) LLP

(4) LEGAL & GENERAL AFFORDABLE HOMES (CAPITAL) LIMITED

(5) LEGAL & GENERAL AFFORDABLE HOMES (DEVELOPMENT 3) LIMITED

Applicants

- and -

[REDACTED]

Respondent 1

Respondents

STATEMENT OF CASE

Introduction

1. This Application is brought under section 20ZA(1) Landlord and Tenant Act 1985 ("LTA 1985"). The Applicants seek determinations which grant dispensation from the requirements to consult under Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") in relation to a number of long-term agreements they have now entered into with various providers for the provision of housing management services to residential properties leased and let by it ("the Varied Management Agreements").

The proper approach to the Application

2. A case in the High Court in 2012 (Phillips and others v Francis) cast doubt on whether there is a cost threshold below which landlords do not need to consult on qualifying works.
3. However, in October 2014 the Court of Appeal overturned this decision, so reinstating the “sets approach” ie section 20 consultation should be applied to individual sets of qualifying works without reference to time periods or service charge years.
4. The Supreme Court in a case in 2013 set out its views on how Tribunals should deal with applications for dispensation from landlords (*Daejan v Benson*). The Applicant states that Daejan concerned qualifying works, the Applicant entered into new agreements which are indeed QLTAs, however they are qualifying works under long term agreements.
5. The purpose of the Regulations is to ensure that lessees are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. In considering dispensation requests, the Tribunal should focus on whether the lessees were prejudiced in either respect by the failure of the landlord to comply with the Regulations (relevant prejudice).
6. The power to grant dispensation is not ‘all or nothing’. The Tribunal has power to grant dispensation on appropriate terms and can impose conditions on the grant of dispensation including a condition as to costs that the landlord pays the lessees’ reasonable costs incurred in connection with the dispensation application.
7. The Applicant is in breach of Regulation 5 The Service Charges (Consultation Requirements) (England) Regulations 2003

7.1 The consultation requirements: qualifying long term agreements

- 5.—(1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

8. Section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charges (Consultation Requirements) (England) Regulations 2003 state that if a landlord is planning to carry out works, where anyone leaseholder will have to contribute more than £250 towards the cost of those works, the landlord must follow a set procedure to consult with the leaseholders.

9. A service charge provision in the lease should be interpreted so as to prevent double recovery, therefore the landlord may be required to give credit for third-party funding received in respect of the works and reduce the service charge payable by the leaseholder. This could include insurance payouts, as well as warranties and public sector funding (Avon Ground Rents Ltd v (1) Cowley & Others, (2) Metropolitan Housing Trust, (3) Advance, (4) May Hempstead Partnership [2019] EWCA Civ 1827; Sheffield CC v Oliver [2017] EWCA Civ 225.) The landlord may also have to take into account likely future contributions from a third party, for example under a warranty payment - this will depend on the facts of each case (Avon Ground Rents Ltd v (1) Cowley & Others, (2) Metropolitan Housing Trust, (3) Advance, (4) May Hempstead Partnership [2019] EWCA Civ 1827; see s.19(2) Landlord and Tenant Act 1985.)

Double recovery is specifically prohibited in relation to certain types of public funding which have contributed to the works(s.20A Landlord and Tenant Act 1985.)

Where the freeholder is a social landlord in receipt of funding from a Government or Homes and Communities Agency source, the leaseholder may be entitled to have the total cost of works capped. This is sometimes referred to as 'Florrie's law'.

Submissions

9. It is submitted that I and the Respondents of [REDACTED] will suffer prejudice ,if dispensation from Schedule 1 is granted in relation to any of the Varied Management Agreements.

9. First, dispensation will make a difference to the Respondents, where the Varied Management Agreement is made between the First Applicant and the Existing Provider, as the Applicant can recover costs up to 18 months form the occurrence. I am concerned that since we have purchased our shares and entered into the contract under the Lease , the properties were managed by POD. According to the documents it is stated that the management company was Stonewater and the reason for the change was a demand for an increase of the charges. It is stated that the new contract was entered in February 2024 . On the contrary our service provider has not changed since February and we are still managed by POD . We have consulted with the other tenants in the development and their properties are also managed by POD and there was not such increase in their services charges . My concern is that the terms of the Varied Management Agreement (including as to the fee) might not be identical to the terns of the Management Agreement and allow them to recover subcontracting extra charges which will later been attempted to be recovered if this application is to be accepted . Moreover, in accordance with the Law the Landlord must not enter into a contractual agreement with close relative and in accordance with the Amalgamation of Society Agreement relatives or managers should not benefit or acquire profit . Pinnacle is a family owned company and it is owned by a family member of the management directors of Bellway . Bellway is the owner of the Grant lease of the development. The Court needs to examine this connection and seek disclosure prior determining this application .**(I refer to exhibits KS 1 -Lease , Amalgamation of Societies)**

The Law:

The Landlord must **2.**—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made in relation to the proposed works by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's contract statement

4.—(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a statement in respect of the proposed contract under which the proposed works are to be carried out.

(2) The statement shall set out—

(a) the name and address of the person with whom the landlord proposes to contract; and

(b) particulars of any connection between them (apart from the proposed contract).

(3) For the purpose of sub-paragraph (2)(b) it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b)where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c)where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d)where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e)where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

10. Second, if the reversion to a Respondent's Lease was later transferred to one of the New RPs, and the New RP contracts with the Existing Provider (which is likely) this would make a difference to us .The Applicant has not provided the full documents with additional charges and we are unable to prepare our defence accordingly, as we are unaware of the full rights the new RP's will have and the additional charges and rights they might have.

11. Third, if the First Applicant or any New RP was to appoint a Replacement Provider. We will suffer prejudices . The unit fee would be different .The Applicant refers to Schedule 1 to the Regulations , stating the landlord does not need to appoint the contractor whose estimate is the lowest. However, under Regulation 5 The Service Charges (Consultation Requirements) (England) Regulations 2003, the Landlord must follow the appropriate process and the Leaseholders have the right to be consulted otherwise this can be a breach in the Lease agreement . The Leaseholders have the right to be consulted if the Landlord chooses to enter into a contract which will result in an increase of the costs for the Leaseholders .

Should conditions be imposed?

12. Conditions should be added and Respondents should not occur legal fees to be included in their service charge
13. The Court has the power to grant more conditions ,especially to consider whether service charges can be recovered if the application is not successful .