

**Y TRIBIWNLYS EIDDO PRESWYL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL**

**Reference: LVT/0036/12/21, LVT/0037/12/21, LVT/0038/12/21 and  
LVT/0039/12/21**

**In the Matter of Premises at Heol Llewellyn Barmouth, Llwyn Bueon Bontnewydd,  
Lon Helen Caernarfon and Y Bryn Barmouth**

**And in the matter of Applications under Section 20ZA of the Landlord and Tenant  
Act 1985**

**Applicant: Adra Tai Cyf**

**Representation: Not present or represented**

- Respondents:**
- (1) Mr Paul Taylor and Melissa Taylor (7A Heol Llewellyn, Barmouth)**
  - (2) Mr Steven Carver and Cheryl Carver (11 Heol Llewellyn, Barmouth)**
  - (3) Ms Kerry Morris (2 Ty Bryn, Barmouth)**
  - (4) Mr Shaun Griffiths (62 Llyn Bueno, Bontnewydd)**
  - (5) Mrs Ceinwen Morgan (7 Lon Helen, Caernarfon)**

**Representation: Not present or represented**

**Type of Application: To dispense with the requirement to  
consult lessees concerning qualifying works.**

**Tribunal: Colin Green (Chairman)  
Johanne Coupe FRICS (Valuer Member)  
Angie Ash (Lay Member)**

**Date of determination: 8 April 2022**

**DECISION**

- (1) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the Tribunal grants dispensation from the consultation requirements of the Service Charges (Consultation Requirements) (Wales) Regulations 2004 for the purpose of the proposed works set out in Annex 2 to the Applicant's statement of 11 February**

**2022 to the extent that such works affect the service charge liability under the Respondents’ leases of the five properties set out above.**

- (2) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.**

## **REASONS FOR DECISION**

### **Background**

1. The Tribunal has before it four consolidated applications by the Applicant seeking dispensation from the consultation requirements provided by section 20 of the Landlord and Tenant Act 1985, pursuant to section 20ZA of the 1985 Act, in respect of the five properties set out above.
2. The works in question are described in the application forms as:  
*“Rewiring and replacement lighting within communal corridors and stairwells in blocks of flats to ensure they are compliant with the requirement of the IEE wiring regulations. Proposed start date of the works: January 2022.”*  
According to paragraph 13.2 all tenants will be consulted concerning the timing of the works (January onwards).
3. The more detailed description of the works is contained in the tender documentation attached as Appendices A to J to the application form. As can be seen from Appendix A, there are a total of 25 blocks where the work is to be carried out, but only five tenancies in respect of flats in four of those blocks are the subject of the applications – Heol Llewellyn, Barmouth, Ty Bryn, Barmouth, Llyn Bueno, Bontnewydd, and Lon Helen, Caernarfon – the current leaseholders being named as Respondents. Although no explanation is provided, the Tribunal concludes that this is because most tenancies in the blocks are short-term tenancies with either no service charge provisions or fixed service charges or charges which for some other reason do not fall within the definition of “service charge” under s. 18 of the 1985 Act. The five tenancies in question are long leases acquired under the right to buy contained in the Housing Act 1985 and include service charge provisions which vary according to the “relevant costs”. The leases are exhibited to the application forms.
4. Pursuant to paragraph 1 of the Tribunal’s directions dated 20 January 2022, the Applicant provided a statement dated 11 February which exhibited as Annex 2 what appears to have been the successful tender for the works from AER Cymru Cyf, at a total cost of £175,487.98. None of the Respondents has provided a statement pursuant to paragraph 2 of the directions or otherwise responded, and the Tribunal has proceeded on the footing that they were each served with a copy

of the relevant Application form, directions, and the Applicant's statement of 11 February.

5. The Applicant has indicated that it is happy for the applications to be determined on the papers without an oral hearing, and they were listed to be determined on that basis. The panel has considered the point afresh and determined that these are suitable proceedings to be determined without a hearing.

### **Consultation**

6. Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 contain provisions that require a consultation process to be followed in respect of, amongst other things, "qualifying works", that is, works in respect of which each tenant will have to contribute more than £250.00 by way of service charge. In a case such as the present the details concerning, and timetable for, the relevant consultation process in respect of such works is contained in Part 2 of Schedule 4 to the 2004 Regulations, which include a provision that after service of the initial notice of intention the landlord must obtain at least two quotes for the work, irrespective of whether the tenants have nominated contractors, and for a consultation process to be observed before a final determination of the contractor to carry out the work. Failure to observe the consultation requirements will limit each tenant's liability to contribute to the cost of the qualifying works to the sum of £250.00, but under section 20ZA of the 1985 Act the tribunal is empowered to dispense with all or any of the consultation requirements. There is no breakdown of the costs of £174,487.98 in respect of the five tenancies in question, but it is safe to assume that the contributions will each exceed £250.00.

### **Urgency**

7. In paragraph 10 of the application form, "Urgency of Application", it is stated:  
*"The works are a requirement to ensure that blocks are compliant with regulations. We seek a fairly urgent response to ensure that works will be carried out at a no-loss basis to us the landlord and also to ensure leaseholders are aware of the lack of s20 procedure in this case."*
8. Although the directions provided the Applicant with the opportunity to expand on this no further explanation was provided in the statement of 11 February. The Tribunal would normally expect more detail as to why there is urgency in having the works carried out. In a sense, all electrical works must comply with detailed regulations which does not, of itself, amount to evidence of urgency. Nor is it clear what is meant by "a no-loss basis" and how that renders the works urgent. Naturally, the leaseholders will be aware of the s. 20 procedure by reason of the applications, but it is unclear quite how that is relevant to the issue of urgency.

### **Determination**

9. For the purpose of determining the applications, the Tribunal will proceed on the basis, without deciding the issue, that the above works fall within the scope of the service charge provisions of the relevant leases and therefore that part of the cost of the works is recoverable by the Applicant from such tenants by way of service charge.
10. The leading decision concerning dispensation is that of the Supreme Court in *Daejan Investments v. Benson* [2013] UKSC 14. According to the guidelines in that case concerning how to approach the issue of dispensation, in the first instance it is for the tenants to identify how they will be prejudiced by a failure to follow the consultation provisions and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate. As noted above however, there has been no response from any of the tenants, so no case of prejudice has been raised. In addition, although strictly speaking the silence of the tenants does not amount to consent, the absence of dissent or any objection to the application is something to which the Tribunal should give suitable weight, as well as the claimed urgency of the work, albeit that the Tribunal has expressed above the rather unsatisfactory way that the matter of urgency has been addressed.

### **Conclusion**

11. In the light of the above, the Tribunal considers it appropriate to dispense with the consultation provisions in respect of the proposed works set out in Annex 2 to the Applicant's statement of 11 February. In granting dispensation, and as mentioned in paragraph 9 above, the Tribunal is making no determination as to whether any service charge costs are payable or reasonable.

Dated this 28th day of April 2022

Colin Green  
Chairman