

Y TRIBIWNLYS EIDDO
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

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RESIDENTIAL PROPERTY TRIBUNAL

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Reference: LVT/0034/11/22

In the Matter of Premises at Cwrt Severn Caldicot, The Reddings Chepstow, Thornwell Road Chepstow, Warren Slade Chepstow, Trevor Bowen House Monmouth, Jubilee Court Abergavenny, Cae Pen Y Dre Close Abergavenny, Old Hereford Road Abergavenny, Radstock Court Abergavenny, Plas Mawr Usk, The Haven Goytre.

In the matter of an Application under Section 20ZA of the Landlord and Tenant Act 1985

APPLICANT: Monmouthshire Housing Association

RESPONDENTS being

TENANTS at: Cwrt Severn Caldicot,
The Reddings Chepstow,
Thornwell Road Chepstow,
Warren Slade Chepstow,
Trevor Bowen House Monmouth,
Jubilee Court Abergavenny,
Cae Pen Y Dre Close Abergavenny,
Old Hereford Road Abergavenny,
Radstock Court Abergavenny,
Plas Mawr Usk,
The Haven Goytre.

TRIBUNAL: Trefor Lloyd (Judge)
Roger Baynham FRICS (Surveyor Member)

VENUE: MATTER DETERMINED ON THE PAPERS

DATE: 24th JANUARY 2023

DECISION

The Tribunal grants the Applicant's Application under Section 20ZA of the Landlord and Tenant Act 1985 to dispose with all of the applicable consultation requirements under

Section 20 of the Landlord and Tenant Act 1985, in relation to the placing of energy supply contracts for the supply of gas to the relevant properties.

Background

1. The Applicant is Monmouthshire Housing Association who manages the properties listed above. By way of an application dated 21st November 2022 it seeks dispensation to enter into a long-term agreement for the supply of gas used for heating of communal areas and in some cases where a communal boiler is in place the heating of individual flats. The application is marked as urgent as the existing contract expires on the 31st March 2022 and once expired the costs of gas will be excessive out of contract. A similar application was made in January 2022 culminating in a decision by this Tribunal on the 22nd February 2022 granting dispensation to then enter into the gas supply contract currently in place.
2. The Application form is silent as to any attempt as to even sending out a First Notice and as such we proceed upon the basis that no steps have been taken in that regard. The reason for an absence of consultation is clearly the continued volatility in the energy market at present making it impossible to provide quotes due to daily price changes.
3. Following receipt of the application form Directions were issued on the 14th of December 2022 providing for (inter alia) the filing of a witness statement setting out the Applicant's case. That statement is signed by a Mr Toby Wales ("Mr Wales") and includes a statement of truth. The Directions also reveal that none of the tenants of the properties sought to be joined as Respondents. Although we have not been specifically told this time we note that in relation to the earlier application which included the same developments 238 properties in total were affected. Given no representations were made from the occupiers we consider it would be disproportionate for this Tribunal to write to all occupiers. As such the 14th December 2022 Directions simply required the Applicant to serve its evidence on the Tribunal by the 13th January 2023 and as far as the Tribunal was concerned the matter would proceed as unopposed in terms of the Respondents.
4. The Applicant was content for the matter to be determined on the papers and the determination was undertaken on the 24th January 2023.
5. Mr Wales's statement confirms the following:
 - (1) The Applicant uses an energy consultant Monarch Partnership. Attached to the statement is a spread sheet detailing prices upon a 12 and 24 month contract as received on the 16th December 2022. The same spread sheet also details out of contract costs.

- (2) Gas prices quoted are only valid for the day in question making it impossible to comply with the Section 20 requirements as any estimate will be invalid the following day.
- (3) It is clear from the spreadsheet that being out of contract would be far more costly and prejudicial to the Tenants.
- (4) Mr Wales also provided us with a decision from this Tribunal relating to the same properties and subject matter (Reference LVT/0047/01/22). That matter was also dealt with on the papers and considered by the same Tribunal members dealing with this current Application.

The Statutory Basis for the Application

6. Section 20ZA(1) of the Landlord and Tenant Act 1985 (hereinafter referred to as the LTA 1985) provides the Tribunal with power upon an Application being received to make a determination to dispense with all, or any of the consultation requirements in relation to any qualifying agreement.
7. A Tribunal has the power if satisfied it is reasonable to dispense with the requirements.
8. Section 20 of the LTA 1985 limits recovery via service charge of the cost of qualifying works from each Tenant to £250 in circumstances where consultation requirements have not been complied with unless dispensed by way of Section 20ZA.
9. The Supreme Court in ***Daejen Investments Limited -v- Benson and Others [2013] UKSC 14*** set down guidance in relation to Section 20ZA Applications and the consideration of the same as follows:
 - (i) Section 20ZA is part of a legislative scheme whose purpose is to ensure that Tenants are not required to pay for unnecessary services, or services which are provided to a defective standard; and
 - (ii) To pay more than they should for services which are necessary and are provided to an acceptable standard.
 - (iii) A Tribunal in considering an Application under Section 20ZA is to consider the extent if any to which Tenants are prejudiced by failure to comply with consultation requirements.
 - (iv) A Tribunal has power to grant a dispensation on terms as it considers appropriate, as long as such terms are appropriate in their nature and effect.

Statutory Consultation Requirements

10. The consultation requirements are contained in the Service Charges Consultation Requirements (Wales) Regulations 2004. In this case the applicable requirements are contained in Part II of Schedule 4 to the Regulations and require:
 - (a) A Notice of Intention to carry out qualifying works. Such a Notice is to include the reasons for considering, if necessary, to carry out the proposed works, and an invitation to nominate a person from who an estimate should be sought;
 - (b) The Tenants then have 30 days in which to respond to the Notice;
 - (c) The Landlord is required to have regard to any observations made;
 - (d) The Landlord is then under a duty to obtain estimates with an obligation to seek estimates from any nominated person;
 - (e) The Landlord has to supply Tenants with a Statement setting out for at least two of the estimates, their estimated costs and a summary of observations made and any estimate from a nominated person must also be included;
 - (f) The Landlord must make the estimates available for inspection;
 - (g) The Landlord must invite observations from the Tenants on the estimates. The Tenants have 30 days to make observations, and the Landlord must have regard to any observations;
 - (h) Following the entering into of a contract for the carrying out of the qualifying works, the Landlord must within 21 days give written notice to each Tenant setting out reasons for awarding the contract, or specifying the place and hours at which a statement of the reasons may be inspected.
11. In this case, the First step has been undertaken and the Applicant seeks dispensation in relation to the remainder for the reasons as aforesaid.

The Applicant's Case

12. The Applicant's case as referred to above is that it is reasonable to dispense with consultation requirements due to the urgency of entering into the agreement to supply gas to ensure supplies do not have to be paid for 'out of contract' which if it occurred would inevitably increase the cost of gas supplied and increase service charges to the respective properties.
13. The Applicant is of the view there is no prejudice to the Tenants as a result of dispensing with the consultation but that they would be prejudiced if no dispensation is granted.

The Respondents' Case

14. None of the Tenants/Respondents sought to be joined as Respondents. As referred to in paragraph 3 of this Decision we were not told this time the number of properties involved but as the same housing estates / developments as in the previous application have been listed and at that time we were told some 238 properties were affected we assume the same to still be the case. As a consequence, given none of the Tenants applied to be joined in as Respondents given there are 238 properties, we did not consider it proportionate to write to all the Tenants and proceeded upon the basis that the Application is unopposed. That of course still means we need to consider all the facts fully before coming to a conclusion.
15. Having considered the matter carefully, we as a Tribunal are of the view that it is reasonable to dispense with all the consultation requirements in this case for the following reasons:
 - (1) There is clearly an urgency to obtain a further fixed term gas supply contract;
 - (2) Given the volatility in the current market it is impossible to obtain quotes that are valid for more than one day.
 - (3) Reverting to an 'out of contract' supply would be extremely costly and prejudicial to the Tenants who would have to pay via the service charge.
16. In the circumstances the Tribunal grants dispensation on the terms set out at the beginning of this decision letter.

Application under s.20 C Landlord and Tenant Act 1985

17. There was no application for any Order under section 20C before us.

Dated this 25th day of January 2023

Tribunal Judge Lloyd