

**Y Tribiwnlys Eiddo Preswyl**

**Residential Property Tribunal Service (Wales)**

**Leasehold Valuation Tribunal (Wales)**

Welsh Tribunals Unit, Oak House, Cleppa Park, Celtic Springs, Newport, NP10 8BD  
Telephone 0300 025 2777. E-mail: rpt@gov.wales

**DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL  
Landlord and Tenant Act 1985, S.20ZA**

**Premises:** Linc Cymru properties in Neath, Port Talbot, Rhondda Cynon Taff, Monmouthshire, Newport, Caerphilly, Blaenau Gwent, Bridgend, Cardiff, Torfaen, Glamorgan and Gwent

**Applicant:** Linc Cymru Housing Association

**Respondent:** Various tenants occupying Linc Cymru properties in Neath, Port Talbot, Rhondda Cynon Taff, Monmouthshire, Newport, Caerphilly, Blaenau Gwent, Bridgend, Cardiff, Torfaen, Glamorgan and Gwent

**Tribunal:** Judge Shepherd  
Neil Martindale FRICS

**LVT Ref:** LVT/0016/07/24

**ORDER**

The Applicant is given dispensation pursuant to s.20ZA. The dispensation is granted unconditionally.

**Reasons**

1. In this case the Applicant seeks dispensation from the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985. The Applicant is Linc Cymru Housing Association ("The Applicant"). The necessary Respondents to the application are the contract holders of the premises affected by the application who are located in Neath, Port Talbot, Rhondda Cynon Taff, Monmouthshire, Newport, Caerphilly, Blaenau Gwent, Bridgend, Cardiff, Torfaen, Glamorgan and Gwent.
2. The Applicant has applied for dispensation from the statutory consultation requirements in respect of the supply of communal gas and electricity supplies for the properties listed in the application. The energy contracts expired at the end of September of this year and the Applicant had to enter into a new contract on 1<sup>st</sup> October 2024. The contract is for 36 months. It was procured by EIC Partnership Limited.

Dispensation is sought because the new contract is a Long Term Qualifying Agreement (“QLTA”) which would normally require consultation with occupiers pursuant to Schedule 2 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004.

3. Although the Applicants have not carried out a formal consultation they did send a letter to the tenants on 21<sup>st</sup> May 2024 explaining the process and the intention to enter into a longer contract in order to obtain the financial benefit that this allows. The tenants were invited to make written observations. There were responses by a handful of contract holders who were generally in favour of the plan.
4. The Applicants rely on an email from Karen Barker at EiC Partnership Limited, who are the Applicant's appointed expert utility consultant. The email sets out the annual contract prices for 12, 24 and 36 month gas and electricity contracts from the cheapest three suppliers, and how they compare with the much more expensive out of contract "Deemed" costs. The prices shown are taken from March 2024 when EiC last approached the market.
5. The Applicant explains that the procurement of gas and electricity supplies is not conducive with ordinary consultation pursuant to s 20 Landlord and Tenant Act 1985. This is because of the volatility of the market for fuel supplies currently. In addition, a mandatory standstill period of 10 days between the decision to award the contract and signing the contract with the successful supplier. Energy prices will change many times over the course of 10 days. Given the volatility in the energy market it is impossible to obtain quotes that are valid for more than one day. Over the course of the statutory consultation timetable, any information about energy prices which may be provided to the Respondents would quickly become out of date due to the rapidly fluctuating energy prices, making it impossible to consult with them about the price of the new energy contracts within the timeframes laid down in the statutory consultation procedure
6. A detailed witness statement was prepared by Susan McNamara the Service Charge Manager for the Applicant explaining the need for dispensation. This is supported by documentary evidence.

## **The law on dispensation**

### ***Landlord and Tenant Act 1985,s.20ZA***

*20ZA Consultation requirements: supplementary*

*(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and*

*“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—*

*(a) if it is an agreement of a description prescribed by the regulations, or*

*(b) in any circumstances so prescribed.*

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

*(6) Regulations under section 20 or this section—*

*(a) may make provision generally or only in relation to specific cases, and*

*(b) may make different provision for different purposes.*

*(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

## **Daejan**

7. In *Daejan Investments v Benson* [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges. The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it had received in relation to the proposed works or having made the estimates available for inspection. The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985, as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from,

the statutory consultation requirements. The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation requirements. The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

8. The Supreme Court, allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003, was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements. The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of

investigating and challenging that application, and to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

9. Lord Neuberger giving the leading judgment stated inter alia the following:

56. More detailed consideration of the circumstances in which the jurisdiction can be invoked confirms this conclusion. It is clear that a landlord may ask for a dispensation in advance. The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, the LVT could not dispense with the requirements on terms which required the landlord, for instance, (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example) five days instead of 30 days for the tenants to reply.

#### **Determination**

10. On its face the application has considerable merit. The flexibility required for large scale procurement of fuel does not fit well with the consultation process. Indeed, the need for the Applicant to act quickly when offered a good deal which benefits leaseholders overall is akin to urgent works of the type envisaged in *Daejan*. Accordingly, the tribunal agrees to give dispensation. There is no evidence of any prejudice suffered by residents therefore the dispensation is given unconditionally. **It is emphasized that the dispensation does not affect the leaseholders' ability to challenge the service charges pursuant to s.27A Landlord and Tenant Act 1985.**

Dated this 14<sup>th</sup> day of October 2024

Judge Shepherd