

**Y Tribiwnlys Eiddo Preswyl  
Residential Property Tribunal Service (Wales)  
Leasehold Valuation Tribunal (Wales)**

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**DECISION AND REASONS OF THE RESIDENTIAL PROPERTY TRIBUNAL**

In the matter of an Application under Section 20ZA of the Landlord and Tenant Act 1985 relating to 1 – 14 Llanerch Hall, Llanerch Park, Trefnant, Denbighshire LL17 0BD

**Premises:** 1 – 14 Llanerch Hall, Llanerch Park, Trefnant, Denbighshire LL17 0BD (“the premises”)

**RPT ref:** LVT/0016/07/24

**Inspection:** 28<sup>th</sup> November 2024

**Order:** The Applicant has been given dispensation pursuant to Section 20ZA. The dispensation is granted unconditionally.

**Applicant:** Watson Property Management

**Respondent:** Mr & Mrs McGregor, the leasehold owners of Flat 11 Llanerch Hall.

**Tribunal:** Judge T Lloyd  
Mr Tom Daulby RICS Surveyor Member  
Bill Brereton Lay Member

## **Background**

1. The Applicant by way of an application dated 20<sup>th</sup> June 2024 applies for dispensation in relation to qualifying works of roof repair which had already been carried out. The Applicants were represented by Mr J Langhan and the Respondents represented themselves.
2. The Surveyor and Lay Member of the Tribunal inspected the property on the morning of the 28<sup>th</sup> November 2024 and thereafter a hearing commenced at 2pm at the Prestatyn Civil Justice Centre.
3. We were supplied with a bundle in electronic format that runs to some 107 pages which included the Application Form, Directions Order, copy of a lease dated the 6<sup>th</sup> February 1980 relating to Flat 9 Llanerch Hall and both a black and white and colour copy of a report dated 7<sup>th</sup> March 2024 prepared by Keith J Laverick of Keith James Chartered Building Surveyor (found at pages 12 – 40 of the electronic bundle). In addition, we were provided with a copy of what is referred to as an updated quotation dated 5<sup>th</sup> June 2024 from Stuart Smith Roofing Contractors Ltd (found at page 11 of the electronic bundle).
4. The Applicant has applied for dispensation from the statutory consultation requirements in respect of the repairs to the roof of the property. Dispensation is sought because the roof repairs are qualifying works which would normally require consultation with occupiers pursuant to Schedule 2 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004.
5. No formal consultation had been undertaken and during the course of the hearing we were told that the Applicants only received notice once the Application for Dispensation to this Tribunal had been made. Eventually there was common ground that the Applicants were only made aware of the Application on the 17<sup>th</sup> July 2024 whereas the Application to this Tribunal was made on the 20<sup>th</sup> June 2024.

## **The Hearing**

6. Mr Langhan gave evidence first affirming the application form and explained to us that historically there had been temporary repairs to the roof. There were cash-flow problems as there was no entitlement to hold a reserve fund. As there was money left over during the service charge year to the 31<sup>st</sup> July 2024. that was sufficient to meet the roof repairs as detailed in the quotation at page 11 of the electronic bundle and, as a consequence the Applicant decided to proceed with the works. Accordingly, as the service charge account had sufficient funds there was no need to seek any additional payments to be able to meet the obligations of these works.
7. Nothing turns on it but it was not clear as exactly when the works were completed. At one stage it was suggested that it was sometime at the end of July and at that another stage sometime in August. In any event it matters not as the works were completed before we commenced the hearing of this matter. Mr Langhan maintained

that the roof repairs were essential to prevent the building from further deterioration especially given it is a Grade II listed property, and as a consequence of the same all works had to be undertaken on a like for like basis as otherwise there would be a need to obtain Listed Building Consent.

8. The other thrust of the Applicant's case is that there was also a narrow window to carry out the work and the best time was during July and August.
9. The Application is supported by a document signed (in type) by Kensey Burke, Major Works Administrator. That document does not consist of a Statement of Truth.
10. The Respondents in turn provided a document headed "Response to Reasons for the 20ZA Dispensation for Non-Consultation for Major Works and Attachments". That document can be found at pages 100 – 106 of the electronic bundle and there follows a short document which raises a number of questions at page 107.
11. As aforesaid in summary the two items of work are detailed within the Stuart Smith Roofing Contractor Ltd quotation a colour copy which can be found at page 99 of the electronic bundle.
12. That quotation is for the sum of £3,556.00 plus VAT of £711.00 in relation to erecting scaffolding in removing some 3 metres of defective lead work and replacing the same, plus reinstating a sandstone upstand. It is not clear from the quotation to which part of the building this applies but we were told in evidence that it applied to Apartment 7. The second item is labelled as referring to Apartment 6 and that was to carry out the same works as previously mentioned. This time for the slightly greater sum of £3,586.00 plus VAT of £717.20.
13. We then heard from Mrs McGregor in the main in relation to the Respondents' case. The Respondents' main criticism was the absence of any notice as to the Application before it was made and also a dearth of any correspondence from the Applicants.
14. We were also told that the Respondents were not permitted to attend the AGM, something which Mr Langan initially denied and then it transpired when we heard from Emma Blues that was the case as Mr and Mrs McGregor are the only leaseholders who do not also own a share of the freehold, the other leaseholders all owning a share of the freehold itself.
15. The Respondents' other criticism was that responses from the Applicant occurred in September after the works had clearly been completed, and the fact that they had never received audited accounts. Again, this seems to echo from the fact that they are not able to attend the AGM and were not sent the same as they were apparently freely available at the AGM.
16. When asked specifically about the roof repairs that had been undertaken Mrs McGregor agreed that they were necessary and also agreed that they had been undertaken to a sufficient standard. It was explained to the parties during the hearing

that all we were dealing on the day was the dispensation application and nothing else. If dispensation was granted that would not in any shape or form result in the costs being payable or in a determination that the costs concerned were reasonable. Those matters if the parties wished to pursue the same were for another day.

### **The Law on Dispensation**

17. The consultation procedure to be followed is set out in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 SI 2004/684 (“The Consultation Regulations”).
18. By virtue of Regulation 6 of the Consultation Regulations, in the absence of a valid consultation the amount that the freeholder can lawfully recover from the leaseholder for work is capped at £250.00.
19. Section 20ZA of the 1985 Act provides the Tribunal with power to dispense with all or any of the consultation requirements in Section 20 and the Consultation Regulations if it considered it reasonable to do so.
20. The Supreme Court in **Daejan Investments Ltd -v- Benson 2013 [UKSC]14** provides guidance as to how the discretion under Section 20ZA should be exercised confirming that;
  - i. The purpose of Sections 19 – 20ZA was to ensure a leaseholder was not required either to pay for unnecessary or defective services or to pay more than was necessary for services to an acceptable standard.
  - ii. In the circumstances when considering a Section 20ZA(i) Application the Tribunal has to focus upon the extent of prejudice as it is a result of any failure to comply with the consultation requirements. Further, it was hard to see why dispensation should not be granted where the failure to comply had not affected the extend, quality and costs of works.
  - iii. Compliance with the requirements was not in itself an end and dispensation should not be refused simply by reason of a serious breach. The prejudice flowing from the breach was the main and usually only question for the Tribunal.
  - iv. Where the Tribunal was considering prejudice, the legal burden would be on the Applicant (i.e. the party seeking dispensation from the consultation requirements) but the factual burden in terms of identifying a relevant prejudice would fall upon the Respondent (to the Application for Dispensation). Once the Respondent (to the Application for the dispensation) have shown a credible case for prejudice it is for the Applicant to rebut the same.

## Determination

21. The only criticism levied at the Applicant by the Respondents was the failure to consult prior to the Application to this Tribunal being made. The Respondents agreed at the hearing that the work was necessary and had been undertaken to a satisfactory standard. The Respondents did not identify any factual prejudice as a consequence of what has occurred. In addition, all concerned agreed that the works were essential otherwise the property would deteriorate and inevitably result in a greater cost burden in due course.
22. For all those reasons, we as a Tribunal agree to give dispensation as there is no evidence of any prejudice suffered by the Respondents or indeed any of the other leaseholders/freeholders being subject to the same and we grant the dispensation unconditionally.
- 23. It is emphasised that the dispensation does not affect the leaseholders ability to challenge the service charges pursuant to Section 27A of the Landlord and Tenant Act 1985 in terms of both payability and reasonableness.**
24. Whilst not part of this decision, the tribunal noted during the hearing that lines of communication between the Applicants and the Respondent were not very clear. We would respectfully suggest that in the future all documents that relate to the property and shared during the annual general meeting either also to be sent to the Respondents or consideration be given to inviting the Respondents to attend the annual general meeting as guests (as they are leaseholders as opposed to freeholders). Sharing information in either of these ways would in our view assist all concerned.

Dated this 4<sup>th</sup> day of December 2024.

JUDGE T LLOYD