Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0010/06/25

In the Matter of Premises at Bro Llewellyn Penrhyndeudraeth, Cysgod Y Coleg Y Bala, Flat Ffynhonnau Dolgellau, Hafan Deg Park Road, Morfa Cadfan, Gwynedd, The Old Palace St Asaph Sir Ddinbych

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

APPLICANT: Adra Tai Cyf

Leaseholders: Tenants at

Bro Llewellyn Penrhyndeudraeth,
Cysgod Y Coleg Y Bala,
Flat Ffynhonnau Dolgellau,
Hafan Deg Park Road,
Morfa Cadfan, Gwynedd,
The Old Palace St Asaph Sir Ddinbych

DECISION

Background

1. It was recorded in the Directions Order dated 5th day of August 2025 that the Tribunal has not received any requests from the Leaseholders of the identified properties to be joined as Respondents to the application. That remains the position as at the date of this decision.

2. The Directions Order required the Applicant to file at the Tribunal a Statement of Truth in support of the application exhibiting any relevant documents to include the following:

   a) Details and cost estimates of the qualifying agreement involved.
   b) Any further representations in addition to those in the application form as to why dispensation is sought together with submissions as to why it is reasonable for the LVT to dispense with the consultation requirements of sections 20 and 20ZA of the Landlord and Tenant Act 1985.
   c) The Applicant's submission on whether or not there will be any prejudice suffered by the Respondent tenants if the application is granted.
   d) Any further submissions and/or Case Law in support of the application.

3. The Applicant states that they are required to enter a fixed rate gas supply contract for blocks where the properties are supplied by a shared gas boiler. The Applicant states that they have in previous years taken a 12 month fixed term gas supply contract in order to secure a contract without the requirement to consult. Other than the Statement of Truth the Tribunal has not been supplied with evidence of these matters.

4. The Applicant believes that due to gas prices being volatile entering into a 24 month gas supply contract will financially benefit all contract holders at the identified tenanted properties.

5. The Applicant has not consulted on the 24 month gas supply contract and seeks a dispensation on the obligation to consult due to gas prices being volatile and the tariff offered by the gas supplier being valid for a period of 24 hours only. In these circumstances the Applicant claims they were unable to carry out a consultation.

6. The Applicant secured a contract of gas supply with the supplier EDF on the 25th March 2025 on the basis of a supply for a 24 month period rather than a 12 month period. The contact with EDF was entered into on the 1st April 2025. The Applicant states that the charges for this contract will be payable from 3rd April 2026. No evidence is given in relation to the terms and conditions of this contract and whether it can be terminated and if it can be terminated with what consequences.

7. The Statement of Truth filed by the Applicant states that the Applicant believes that there is no prejudice suffered by the Leaseholders if the application were to be granted as a 24 month gas supply contract benefits the Leaseholders financially due to the volatile nature of gas energy prices. The Applicant has filed at the Tribunal a tabular comparison referring to prices based on best rates tariffs provided by EDF and valid on 25.3.2025. The Applicant claims that the table demonstrates the financial difference between a 12 month and a 24 month gas supply contract at each of the properties occupied by the Leaseholders. A further table is filed which the Applicant claims shows the annual saving per contract holder at each of the identified properties. There is no difference in the standing charge applicable to the gas supply for both the 12 month and the 24 month gas supply contract.

8. This decision has been made at a remote hearing on the papers without in person attendance by the Applicant or any of the Leaseholders.

The Law

9. S.20ZA of the Landlord and Tenant Act 1985 (the "Act") provides as follows (relevant excerpt).

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 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.

10. The powers of the Secretary of State were transferred to the National Assembly for Wales (now Welsh Parliament), which made the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (the "Regulations").

11. The most relevant excerpts of the Regulations are as follows. Schedule 1 outlines the specific Consultation Requirements and is only reproduced in an annex to this decision.

4. Application of section 20 to qualifying long term agreements
(1) Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

5. The consultation requirements: qualifying long term agreements
(1) ... 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.

12. The Supreme Court addressed the considerations that a Leasehold Valuation Tribunal should take into account in exercising its discretion to dispense with the Consultation Requirements: *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('Daejan). In summary, the Supreme Court decided that the Tribunal should focus on the prejudice that the tenants might suffer due to the landlord's failure to consult, notably in two respects: whether the works chosen were appropriate, or whether they cost more than would be appropriate (see paragraph 44 of the judgment). This seems to require an assessment of prejudice in the form of financial loss as distinct from some other loss such as being hindered in the planning of finances.

13. The Supreme Court found that the scope of the Tribunal's powers to apply terms to any dispensation is broad, provided of course that any terms imposed are appropriate (see paragraphs 54-55 of the judgment).

14. In the case of Marshall v Northumberland & Durham Property Trust Ltd [2022] UKUT 92 (LC) the Upper Tribunal set out a two-step process to considering an application for dispensation (at [62]):

    1. The Tribunal must 'systematically identify the steps which the 'landlord] had taken and those which it had omitted and for which it required dispensation.
    2. The Tribunal must then 'ask itself in terms what was the consequence of those steps not having been complied with'.

15. The Upper Tribunal in Marshall v Northumberland & Durham Property Trust Ltd recognised that landlords may be subject to contractual or regulatory duties to deliver essential services or undertake works necessary for safety, as was the case in the matter before it. However, it emphasised that such obligations form part of the broader statutory framework governing service charges. They do not justify setting aside the procedural protections afforded to leaseholders, nor do they warrant automatic dispensation from consultation requirements solely on the basis that the works were urgent (see [64]).

16. The Upper Tribunal in Marshall v Northumberland & Durham Property Trust Ltd also underscored the principle that each leaseholder must be given a fair opportunity to express their views. This reflects the decision of the Court of Appeal in *Aster Communities v Chapman* [2021] EWCA Civ 660, which affirmed the importance of individual participation in the consultation process.

17. Accordingly, where a landlord is required to undertake urgent works to a property, and the associated costs trigger the statutory consultation requirements, it is prudent for the landlord to:

    - Seek an expedited application for advance dispensation from the First-tier Tribunal, ideally on terms that permit a shortened or modified consultation process, as contemplated by Lord Neuberger in *Daejan Investments Ltd v Benson* at paragraph [56]; or
    - If obtaining advance dispensation is not feasible, provide leaseholders with as much prior notice as possible before the works commence, and afford them a reasonable opportunity to comment on the proposed works.

    Taking these steps will help mitigate the risk of leaseholders asserting that they have suffered [financial] prejudice due to non-compliance with the consultation requirements, and will thereby improve the likelihood that the Tribunal will grant dispensation without imposing conditions.

18. The above case law concerns qualifying works, but this Tribunal considers that there is no reason why the same principles should not apply to qualifying long term agreements.

The Determination

19. This application is predicated on the premise that the Applicant believed that it is subject to the Consultation Requirements but was unable to comply with them because with gas prices being volatile it would be unwise to do so as the Consultation Requirements and in particular the time required by such a consultation would prevent the Applicant from acting quickly to secure the best available gas prices when available in the supplier market.

20. The Tribunal notes that the tribunal papers and evidence bundle do not disclose whether there has been a partial compliance with the Consultation Requirements by the Applicant. The Tribunal has therefore proceeded on the basis that there has been no consultation by the Applicant with the Leaseholders at all.

21. A failure to consult, unless minor or technical, would be a matter that a Tribunal (pre-Daejan) would take into account in considering whether to grant dispensation even where there was no evidence of resulting financial prejudice to the tenants as is asserted by the Applicant. However, this Tribunal accepts that Daejan changed this approach as Lord Neuberger in Daejan rejected the idea that consultation is important for its own sake: 'The sections are not concerned with public law issues or public duties, so there is no justification for treating consultation or transparency as appropriate ends in themselves.'(see[37]). Instead, they are seen as being in place solely to support the policy reflected in section 19 of the Landlord and Tenant Act 1985 which is to ensure that leaseholders do not pay more than is reasonable for necessary works and services which are provided to a reasonable standard. (see[38]).

22. Therefore, the focus of a tribunal when considering whether to grant dispensation is 'the extent, if any, to which the tenants were prejudiced' in respect of the extent, quality or costs of the works 'by the failure of the landlord to comply with the Requirements.' (see[39]).

23. Further, the factual burden of identifying relevant prejudice is on the leaseholders. Therefore, dispensation may be granted by a tribunal unless tenants oppose the application and provide evidence of relevant (financial) prejudice.

24. The main purpose of the Regulations is to ensure that tenants are aware of landlord proposals that will have an impact on the service charges those tenants are expected to pay, and to provide those tenants with an opportunity to comment on the proposals. Nothing in the Consultation Regulations prevent those proposals from evolving over time. Indeed, they refer repeatedly to "estimates", not fixed prices. Paragraph 5(9) of Schedule 1 refers explicitly to proposals whose costs can't reasonably be estimated (stipulating that the "current unit cost" must be shown).

25. Without the benefit of submissions this Tribunal cannot see any good reason why the Consultation Requirements could not be satisfied at least in part by giving an

indication to the Leaseholders of what the Applicant proposed in respect of gas supply contracts. For instance, to enter into a new agreement, to pursue the cheapest tariff available when rates are adjudged the most competitive, and to consider contracts of varying length, albeit stating that precise unit charges are subject to change. Any Leaseholder interested in inviting the Applicant to approach other gas supply providers, or to comment on the length of contract, would then be afforded the opportunity to do so. In light of any such observations, the Applicant would then decide with whom to contract.

26. However, the Tribunal accepts there may be advantages to both the Applicant and the Leaseholders in seeking agreements of a longer duration and to which the Consultation Requirements apply.

27. The Applicant submits that the Tenants will not suffer any prejudice through the dispensation of the Consultation Requirements. The Tenants have not alleged any prejudice, nor – to the Tribunal's knowledge – have any made any observations at all to the Applicant or this Tribunal. The question than for this Tribunal is whether in the background circumstances and following the relevant law set out above it is *reasonable* to dispense with the Consultation Requirements.

28. The Tribunal is of the view that the Consultation Requirements could have been followed at least in part. However, given that the factual burden of identifying relevant prejudice is on the Leaseholders and without relevant evidence to that effect this Tribunal considers that it is *reasonable* to dispense with the Consultation Requirements and to grant dispensation as sought by the Applicant having regard to the evidence submitted to the Tribunal that there is a financial benefit to the Leaseholders and no financial prejudice.

29. However, there is no justification for dispensing with all of the Consultation Requirements. Notably, there appears to be no good reason for failing to comply with paragraph 8 of Schedule 1, which describes a landlord's duty on entering into an agreement. It requires the tenants to be notified of a contract that has been entered into and to provide reasons for that decision if the agreement was not the cheapest. Given that decisions as to contracts entered into may be relevant to any challenge to, or assessment of, the reasonableness of any service charge, this information could be of some importance to the Leaseholders and it would be prejudicial to deprive them of it. It is not for this Tribunal to determine or predetermine any of these issues particularly when there is no evidence of the termination provisions of the contract and that relevant tariffs will not apply until 3rd April 2026.

DECISION

30. Dispensation from consultation is granted in respect of the agreement with EDF dated 1st April 2025 for the supply of gas to the above-listed properties, save in respect of the requirements laid down in paragraph 8 of Schedule 1 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004/684 – the duty on entering into an agreement.

Dated this 29th day of September 2025

Michael Draper
Tribunal Judge

Annex

Schedule 1 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004
SCHEDULE 1 CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

Notice of intention
1.
(1) The landlord shall give notice in writing of intention to enter into the agreement–
(a) to each tenant; and
(b) where a recognised tenants' association represents some or all of the tenants, to the association.
(2) The notice shall–
(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;
(b) state the landlord's reasons for considering it necessary to enter into the agreement;
(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;
(d) invite the making, in writing, of observations in relation to the proposed agreement; and
(e) specify–
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

Inspection of description of relevant matters
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 relevant matters 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 agreement

3.

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

Estimates

4.

(1) Where, within the relevant period, a single nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Preparation of landlord's proposals

5.

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.
(4) Each proposal shall contain a statement of the relevant matters.
(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord–
(a) of the party's name and address; and
(b) of any connection (apart from the proposed agreement) between the party and the landlord.
(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord–
(a) where the landlord is a company, if the party is, 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 party 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 party 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 party 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 party 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.
(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.
(8) Where–
(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub- paragraph (7); and
(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of the landlord’s expenditure under the proposed agreement, each proposal shall contain a statement of that estimated expenditure.
(9) Where–

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub- paragraph (7) or (8)(b); and
(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters, each proposal shall contain a statement of that cost or rate.
(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by the landlord of premises to which the agreement relates, each proposal shall contain a statement–
(a) that the person whose appointment is proposed–
(i) is or, as the case may be, is not, a member of a professional body or trade association; and
(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and
(b) if the person is a member of a professional body or trade association, of the name of the body or association.
(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.
(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.
(13) Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals
6.
(1) The landlord shall give notice in writing of proposals prepared under paragraph 5–
(a) to each tenant; and
(b) where a recognised tenants' association represents some or all of the tenants, to the association.
(2) The notice shall–
(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;
(b) invite the making, in writing, of observations in relation to the proposals; and
(c) specify–
(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals
7.
Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Duty on entering into agreement
8.
(1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, the landlord shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)–
(a) state the reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and
(b) where observations are made to which (in accordance with paragraph 7) the landlord is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.
(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.
(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.