

**Leasehold Valuation Tribunal for Wales**

**Residential Property Tribunal**

Ref: 1001740/Waundeg

**TRIBUNAL**

Rhys Taylor  
Roger Baynham MRICS

**CHAIRMAN**

Rhys Taylor

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 dated 17 February 2012

**Name of Property** : 8 Waun Deg, Nantybwich, Tredegar, NP22 3SW ("the property")

**Applicant** : Tai Calon Community Housing Ltd

**Respondent**: Mr Calvin Evans

## ORDER

Upon the Applicant indicating to the tribunal that it will charge no more than £5,950 inclusive of VAT (if any) to the Respondent for the works indicated in the letter and enclosures dated 2 March 2012 and that it may also need to charge up to £400 for the costs of a replacement gas flue liner and gas safety certificate, should that be necessary.

And upon the Applicant orally inviting the tribunal to amend the application dated 17 February 2012 to include a dispensation of consultation in respect of the gas flue liner, should that be necessary.

And upon the Respondent having indicated that he did not object to the Applicant's application to amend whilst the tribunal were at the property on the 4 April 2012, the Respondent having elected not to attend at the hearing.

And upon the Respondent having consented in writing to the Applicant's application.

And upon the Applicant having indicated that it does not intend to seek to recover the costs of this application under the lease.

IT IS ORDERED THAT:-

1. The Applicant do have permission to amend their application to include the gas flue liner and gas safety certificate and this order shall stand as such amendment without the requirement for further amendment to the application or re-service upon the Respondent.

2. The Applicant's obligation to consult pursuant to The Service Charges (Consultation Requirements) (Wales) Regulations 2004 ("the regulations"), to carry out the works:

- a. identified in the letter and enclosures of 2 March 2012 from the Applicant, estimated as being £23,800, for which the Respondent is liable for £5,950, and
- b. of replacing the gas flue liner and obtaining gas safety certificate in the event that it is necessary.

are hereby dispensed with.

## REASONS

### **Introduction.**

1. This is an application dated 17 February 2012 pursuant to s.20ZA of the Landlord and Tenant Act 1985 in respect of works which are required to be carried out to the property.
2. By s.20ZA the tribunal may dispense with the consultation requirements set out in the regulations if it is reasonable to do so. The recent Court of Appeal decision in Daejan Investments Ltd v Benson [2011] EWCA Civ 38 confirmed earlier authority that the tribunal must consider “of the first importance” [72] whether significant prejudice to the leaseholders will be caused by the granting of dispensation. At paragraph [63] the Court of Appeal refers to, “...some examples of when dispensation might be granted ... (i) the need to undertake emergency works; (ii) the availability, realistically, of only a single specialist contractor....”

### **Background.**

3. The property is a first floor self contained flat in a block of 4 similar type units (“the block”), constructed circa 1950s. The roof of the block comprises concrete roof tiles which, over time, have become porous and have caused substantial water ingress and consequential significant damage to the Respondent’s property.
4. The property is held on a long lease of 125 years from 1 June 1991. The Applicant became the freeholder upon an assignment from the County Borough of Blaenau Gwent dated 26 July 2010. The lease contains a typical, if now old fashioned, service charge provision at clause 4(3) and also under Schedule C. This makes the Respondent liable for repairs carried out under the Applicant’s repairing covenant.
5. The Respondent is liable under clause 4(3) to pay “a proportion of the reasonable expenses and outgoings incurred...” which the Applicant has construed as being 25%. We were told that the floor areas of the 4

flats in the block were identical and the proportion therefore appears reasonable.

### **The inspection.**

6. The tribunal attended on the 4 April 2012 at 10 am. The tribunal comprised The legal chairman Mr R Taylor and the surveyor member Mr R Baynham. Present from the Applicant were, Eve Woolhouse (ILEX), Mr P Winterson (head of asset management at the Applicant) and Mr A Cooke (technical services manager for Sirhowy). The Respondent was present and consented to the tribunal and the other representatives attending inside his property.
7. The property is 'Cornish' type non traditional construction with a Mansard style roof, overlaid with concrete roof tiles. The water ingress has caused significant damage to the second bedroom (where a portion of the ceiling has collapsed), lounge, kitchen and bathroom. Plastic sheeting was on furniture and the general appearance of the inside of the property was one of having suffered significant disruption through water penetration.

### **The hearing.**

8. At the hearing the representatives of the Applicant attended at the Vitec Centre at 11 am. The Respondent declined to attend but as already indicated consented to the amendment to the application whilst at the property and also agreed to the application as originally put in any event.
9. Mr Winterson and Mr Cooke told us that the work which was necessary to be carried out to the roof required a specialist contractor due to the style of tiles. They retain a list of 8 approved contractors and they sought tenders with 6. In the event they had chosen the second cheapest contractor, A J Bevan, (who was only £270 more expensive than the cheapest) on the grounds that they have worked with them in the past successfully and the cheapest contractor has previously caused problems.

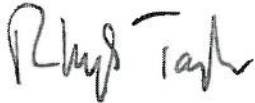
10. We were satisfied that no prejudice has been suffered by the Respondent and that it was reasonable to grant dispensation.

**Extent of our decision.**

11. The Respondent is fully aware of the situation and wishes the work to be undertaken.

12. It should be noted that all we are doing is dispensing with the Applicant's requirement to consult under the regulations. We are not asked on this occasion to make any observations as to the reasonableness of the costs of the works, which may be a matter which a leaseholder could pursue under s.20 Landlord and Tenant Act 1985. We are also not asked to make any determination as to the recoverability of the service charge under the terms of the lease, we are merely dispensing with the consultation requirement.

4 April 2012



Procedural chairman