

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0016/07/22

In the Matter of Premises at Ash Tree Road, Dinham Road, Lawrence Crescent, Albion House, Cwrt Seven, Longfellow Road, Bishops Mead, Mounton Court, The Lawns House, The Lawns Davis Court, Middle Way, Pembroke Road, St Anne Street, The Reddings, Carbourne Close, Church View, Crompton Court, The Albion, Crybridge Park, Granville Street, Kings Fee, Newland Way, Pitmans Ciourt, Somerset Road, Trevor Bowen Court, Mid Summer Way (Odds), Grove Mansions, Jubilee Court, Llwynu Lane, Cwrt Dewi Sant, St Andrews Crescent, St Davids Close, St Davids Road, St Georges Crescent, St Teilos Road, Cae Pen y Dre Close, Chapel Road, Llwynu Close, Old Hereford Road, Llys y Brenin, Llys Llewellyn, Radstock Court, Rother Avenue, St Helens Close, Wellfield Close, Ysguborwen, Skenfrith Court, Ty Coleg, Clare Court, Plas Mawr, Roman Court, Brynteg Place, The Haven, Radstock Court, Thornwell Road, Warren Slade, St Marys Place, The Lawns Bungalows, The Reddings Bungalows - Monmouthshire

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

APPLICANT: Monmouthshire Housing Association

TENANTS at: Ash Tree Road, Dinham Road, Lawrence Crescent, Albion House, Cwrt Seven, Longfellow Road, Bishops Mead, Mounton Court, The Lawns House, The Lawns Davis Court, Middle Way, Pembroke Road, St Anne Street, The Reddings, Carbourne Close, Church View, Crompton Court, The Albion, Crybridge Park, Granville Street, Kings Fee, Newland Way, Pitmans Ciourt, Somerset Road, Trevor Bowen Court, Mid Summer Way (Odds), Grove Mansions, Jubilee Court, Llwynu Lane, Cwrt Dewi Sant, St Andrews Crescent, St Davids Close, St Davids Road, St Georges Crescent, St Teilos Road, Cae Pen y Dre Close, Chapel Road, Llwynu Close, Old Hereford Road, Llys y Brenin, Llys Llewellyn, Radstock Court, Rother Avenue, St Helens Close, Wellfield Close, Ysguborwen, Skenfrith Court, Ty Coleg, Clare Court, Plas Mawr, Roman Court, Brynteg Place, The Haven, Radstock Court, Thornwell Road, Warren Slade, St Marys Place, The Lawns Bungalows, The Reddings Bungalows

DECISION NOTICE

The Tribunal determines that an order for dispensation under section 20ZA of the Landlord and Tenant Act 1985 shall be made dispensing with all the consultation requirements as set out in Schedule 1 of the Service Charges Consultation Requirements (Wales) Regulations 2004 ("the Regulations") in relation to the placing of energy supply contracts for communal electricity supplies to the relevant properties.

The application

1. The applicant seeks an order pursuant to s.20ZA of the landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for the dispensation of any or all the consultation requirements in respect of a qualifying long-term agreement for the supply of electricity

to the communal areas of the properties serving the residential leasehold properties listed in the application.

2. The Respondents are the leaseholders of those properties who will be responsible for the part of the cost of those supplies, pursuant to their service charge liability. The application has no relevance to individual electricity supply on a domestic basis: the leaseholders will be free to continue to obtain their personal electricity from the supplier of their choice.
3. The issue in this case is only whether the consultation requirements of section 20 of the 1985 Act and the Regulations should be dispensed with. If there is any issue as to the cost of the supply, that may be the subject of a separate application under section 27A of the Landlord and Tenant Act 1985.

The background

4. The application was received by the Leasehold Valuation Tribunal for Wales in July 2022. Directions were made on 9th August 2022. Those directions did not direct the Applicant to write to the Respondents, to inform them of the application, the Directions, or any other relevant documents.
5. The application was marked as urgent. The existing bulk electricity contract expires on 30th September 2022, and once expired the costs, as evidenced in the statement of case, of electricity will increase substantially, above quotations for contracted supplies. The statement of case, provided by Mr Toby Wales, dated 15 August 2022, states that due to the volatility of the energy market at present, it is impossible to provide quotes due to daily price changes, so cannot comply with the requirements of the second notice that is prescribed by the Regulations.
6. Due to the urgency of the application and the need to comply with Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, this application could not proceed by way of a paper determination.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements in section 20 of the 1985 Act and the Regulations.

The Applicant's case

8. The statement of case dated 15th August 2022 explained that the applicant will carry out a process with its energy consultant, Monarch Partnership, to identify which utility provider(s) will provide best value bulk electricity supplies to the landlord; and then enter into an agreement with the provider(s) at the best price available at the time.
9. Before entering into such agreement, the applicant would ordinarily have to consult with the leaseholders of the residential properties. The Tribunal heard direct evidence from Mr Toby Wales of Monmouthshire Housing Association that an initial Notice of Intention, in respect of these agreements, had been served upon all the residential leaseholders of the properties listed in this application, on 26 July 2022. The Respondents had bene

informed that the Applicant would be applying to the Tribunal for dispensation. Dispensation is sought from the remaining consultation requirements.

10. The statement of case prepared by Mr Wales stated the following:

- i. The Applicant uses an energy consultant Monarch Partnership. Attached to the statement is a spread sheet detailing prices from Southern, Corona, and Total GP upon a 12- 24 months contract as received on the 15th August 2022. The same spread sheet also details out of contract costs.
- ii. Electricity 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.
- iii. It is clear from the spreadsheet that being out of contract would be far more costly and prejudicial to the Tenants.
- iv. Mr Wales also provided us with a decision from the First Tier Tribunal Property Chamber (Residential Property) in the matter of Estuary Housing Ltd (CAM/22UC/LDC/2021/003P) as authority in support of the application. That case related to the supply of electricity to a number of properties and dispensation being sought as the inability to proceed resulting in electricity costs (out of contract) being increased anywhere from 50 – 100%.

The Respondent's Position

11. There has been no contact from any of the Respondent's in respect of these proceedings. The Tribunal are satisfied that the initial Notice of Intention was issued to all the Respondents. In all the circumstances the Tribunal concluded that the application for dispensation was unopposed.

Reasons for the Tribunal's decision

12. The Tribunal has the jurisdiction to grant dispensation under Section 20ZA of the 1985 Act *"if satisfied that it is reasonable to dispense with the requirements"*.
13. Whilst the Tribunal panel had not been fully appraised of whether the Tribunal had directly notified the Respondents of the proceedings, the Tribunal was satisfied that the Respondents had received a Notice of Intention to enter into an agreement, by way of a document issued on 26th July 2022.

14. Mr Toby Wales confirmed that since the issue of this letter, on 26th July 2022, no contact had been made by the leaseholders. The Tribunal treat the application as unopposed. The Tribunal is further satisfied that there is no prejudice to the leaseholders, by enabling the applicant to work with their brokers to obtain the best market price and avoid any practical problems caused by the consultation requirements under the Regulations.

Dated this 29th day of September 2022

Chairman