

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0015/07/22

In the matter of Premises at Prospect Place, Ferry Court, Ferry Road, Cardiff, CF11 0AU (the Property)

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 (the Act)

Applicant: Prospect Place Management (Cardiff) Limited

Respondents: Leaseholders of Prospect Place:

(Including Davaar House, Douglas House, Pendeen House, Eddystone House, Dover Court House, Alderney House, Breakwater House, Caldey Island House, Lady Isle House, Kilcredaun House, Jones Point House, Hartland House, Flatholme House, Great Ormes House and Duncansby House)

TRIBUNAL AVS Scott Chair
AM Lewis FRICS
C Calvin-Thomas

ORDER AND REASONS FOR THE DECISION OF TRIBUNAL

ORDER

The Tribunal determined that it was reasonable to dispense with the consultation requirements of Sections 20 and 20ZA of the Landlord and Tenant Act 1985 and allow the Applicant to enter into a qualifying long term agreement with Pozitive Energy dated 4 July 2022 for the period 8 July 2022 to 7 July 2026 for the supply of electricity to 27 communal meters at the Property.

BACKGROUND

1. The Applicant applied to the Residential Property Tribunal (Wales) on 30 June 2022 for retrospective dispensation from the consultation requirements under sections 20 and 20ZA of the Act in respect of a long term qualifying agreement with Pozitive Energy for the supply of electricity to the communal meters at the Property.
2. A Procedural Chairman made directions on 3 August 2022. The Applicant was to file a statement giving details of the qualifying long term agreement involved, any further representations as to why it was reasonable for the Tribunal to dispense with the consultation requirements of Sections 20 and 20ZA of the Act, whether there was any prejudice suffered by the leaseholders if the application is granted and any further submissions in support of the application. The Respondents were to file a statement in response by 26 August 2022. All parties were directed to advise the Tribunal whether an oral hearing was required or whether they were happy for the matter to be determined on the papers.
3. On 11 August 2022, the Applicant filed a witness statement by the estate manager employed by the Applicant. She explained that the Property was a modern development of 982 flats but with 27 communal electricity meters on different contracts with different suppliers, causing service charge accounting problems with different contract terms, meters, billing periods and estimated costs instead of readings. Ringley Wales and West Limited (Ringley) had been employed by the Applicant to manage the Property and were directed by the Applicant to find an energy supplier to cover all the communal electricity meters. Two energy brokers were approached but after 4 months, Proactive Energy had only been able to obtain a quote from one supplier, Pozitive Energy. 1, 2, 3 and 4 year fixed term contracts were proposed and included the installation of Smart meters which would enable accurate data to be provided for billing purposes. A meeting of the directors of the Applicant was convened for 8 April 2022 to consider the quotes, when the directors were informed by the broker that the quotation would only be open for acceptance until the end of the day.
4. The Directors considered prices quoted by its current suppliers and advice from the broker as to the likely future cost of electricity, taking into account the volatility of the electricity market. The average cost of the 4-year contract was .32 p per unit whereas the broker was anticipating that commercial rates would plateau between .35 p and .39 p per unit. The directors were aware that the longer contracts would require consultation with the leaseholders under the Act but were advised by Ringley to apply for dispensation with these requirements in order to take advantage of Pozitive's offer which would not disadvantage any leaseholders. In fact, the proposal would be to their advantage as very competitive rates were being offered which were unlikely

to be available in the future. The directors therefore authorised the estate manager to sign the contract on behalf of the Applicant.

THE LAW

5. Section 20 of the Act requires that where the section applies to any qualifying works or qualifying long term agreements, the relevant contributions of tenants are limited to £250 per tenant unless the consultation requirements are either complied with or dispensed with by the appropriate tribunal.
6. Section 20ZA of the Act provides that where an application is made to an 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 such a determination if satisfied that it is reasonable to do so.

THE PROPERTY

7. No inspection was carried out, being unnecessary for the Tribunal's determination as to whether consultation for the qualifying long term agreement could be dispensed with. The Tribunal were provided with a copy of the lease for Flat 1, Prospect Place which provided for a term of 125 years from 1 January 2006 and for the payment of a proportion of the estate service charge, internal block service charge and external block service charge. The lease provides for the Applicant to maintain the service installations at the Property. The estate service charge included the cost of provision of electricity to the Property.
8. The Applicant, in complying with the Tribunal's Directions, did not indicate that a hearing was required. None of the leaseholders responded to the procedural chairman's directions. The Tribunal was satisfied that it could determine the application on the papers and therefore made a determination by the Tribunal's cloud video platform on 12 October 2022.

THE TRIBUNAL'S DECISION

9. The Tribunal found that given the length of the agreement dated 4 July 2022, and the projected cost of electricity for the Property on the basis of the existing supplier (£484,000) it was subject to the requirements of section 20ZA of the

Act and thus required consultation with the leaseholders unless dispensation was given.

10. The leading decision concerning dispensation is that of the Supreme Court in *Daejan Investments v. Benson* [2013] UKSC 14. According to the guidelines in that case, in approaching the issue of dispensation, in the first instance it is for the tenants to identify how they will be prejudiced by a failure to follow the consultation provisions and for the landlord to then address those concerns and establish that it is reasonable to grant dispensation, on terms if appropriate.
11. As noted above however, there have been no submissions or response from any of the leaseholders. The Applicant has asserted that no prejudice will be caused by the lack of consultation. The Tribunal accepted this as there was no evidence to the contrary before it. On the contrary, the offer to supply electricity by Pozitive Energy was to the advantage of all the leaseholders. The Applicant had identified substantial projected savings if the offer was accepted. The Tribunal therefore allowed the application.

Dated this 21st day of October 2022

Tribunal Chair