

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0021/09/22

In the matter of Premises at Capel Crescent Newport, College Road, Ebbw Vale, Gainsborough Drive, Newport and Pentrebane Road Cardiff, (the Property)

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

Applicant: Linc Cymru Housing Association

Respondents: Tenants at:
Capel Crescent Newport, College Road, Ebbw Vale,
Gainsborough Drive, Newport and Pentrebane Road Cardiff

TRIBUNAL: AVS Scott Chair
A Harrison Surveyor
Dr Angie Ash FRSA

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 extend the qualifying long-term agreement with the providers of a Warden Call system for the maintenance of the system for a further 12 months.

BACKGROUND

1. The Applicant applied to the Leasehold Valuation Tribunal (Wales) on 22 August 2022 for retrospective dispensation with the consultation requirements under sections 20 and 20ZA of the Act in respect of a long-term qualifying agreement with Tunstall for the maintenance of a warden on call system. On 8 September 2022, the Tribunal clerk wrote to all the tenants to ask if any of them wished to be joined to the proceedings. No tenant made any request.
2. A Procedural Chairman made directions on 5 October 2022. The Applicant was to file a statement giving details and cost 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 21 October 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. Alex Morgan of the Applicant provided an undated statement, in which it was said that the total cost of the qualifying agreement (a copy of which was not provided to the Tribunal) was £45,446.86. The costs for Capel Court, Plas Bryn, Glyn Anwen and Llys Glyncoed were £4,314.21, £4,480.42, £5,512.32 and £5,251.28 respectively. The first two blocks apparently had 40 lessees and the latter two 41 lessees. That meant that for each tenant, the maintenance cost would be just over £100.
4. Alex Morgan said that they believed that when the buildings were constructed, a warden call system was specified by the building designer, the components of which were, surprisingly, not priced, apparently the practice at the time. Alex Morgan was therefore not able to provide copies of the individual quotes for the installation of the warden call system. They were unable to locate copies of the relevant documentation due to the passage of time. Alex Morgan recognised that the service and cost of maintenance for the warden call system exceeded the financial threshold for a qualifying long-term agreement for four of the schemes as set out in paragraph 3 above. Alex Morgan also said that the agreement with Tunstall ensured a necessary facility to provide support for their most vulnerable tenants and that thus they believed the tenants had not suffered prejudice as a result of the applicant's inability to consult. It was the Applicant's intention to replace the equipment in the future and at this point consultation would be carried out but it was not possible for this to be undertaken in the next 12 months.

THE LAW

5. Section 20 of the Act requires that where the section applies to any qualifying long term agreements, the relevant contributions of tenants are limited to £100 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, it 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 sample tenancy agreement which provides for the payment of a variable service charge. The services to be provided by the Applicant were set out in a schedule, a copy of which had not been provided to the Tribunal.
8. The Applicant, in complying with the Tribunal's Directions, did not indicate that a hearing was required. None of the tenants 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 15 December 2022.

THE TRIBUNAL'S DECISION

9. The Tribunal found that the agreement with the supplier of the warden call system was subject to the requirements of section 20ZA of the Act and thus required consultation with the tenants 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 tenants. 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. The Tribunal therefore allowed the application and granted dispensation for Linc Cymru's current financial year only.

Dated this 3rd day of January 2023

A Scott
Tribunal Judge