First-tier Tribunal
(General Regulatory Chamber)
Appeal Reference: NV/2020/0013P

Considered on the papers on 15 December 2020

Before
Judge Stephen Cragg Q.C.

KEVIN BRITTAIN

Appellant

- and -

THE SECRETARY OF STATE FOR BUSINESS, ENERGY, AND INDUSTRIAL STRATEGY (1)

MRS PERMJIT RAI (2)

Respondents

DECISION AND REASONS

DECISION

1. This appeal is dismissed and the Secretary of State's decision of 9 June 2020 is confirmed.

MODE OF HEARING

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Chamber's Procedure Rules.

3. The Tribunal considered a number of loose documents as a bundle was not provided.

BACKGROUND

4. The Green Deal is a statutory scheme intended to assist in increasing the energy efficiency of residential properties. The scheme operates through companies called 'Green Deal Providers'. Green Deal Providers offer loans and arrange the installation of relevant equipment at their customers' properties under a 'Green Deal Plan'.

5. The Appellant appeals, under Regulation 87 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc) Regulations 2012 (the 2012 Regulations), against a sanctions notice issued by the Secretary of State on 9 June 2020.

6. It is said that the Appellant did not obtain the written confirmation of the freeholder's consent, as required by regulation 36 of the 2012 Regulations, before entering into a green deal plan in relation to 19 St Johns Close, Mildenhall, IP28 7NT (the Property). However, by his notice of appeal, the Appellant argues that he had the oral consent of the freeholder.

THE STATUTORY SCHEME

7. The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 were made pursuant to powers contained in the Energy Act 2011.

8. In this case the Regulations materially provide as follows:-

> 36.—(1) Before an energy plan is entered into, the improver must obtain the confirmation described in paragraph (3) ("confirmation") from—
>
> (a) each person (if any) who will be—
>
> (i)the relevant first bill payer; or
>
> (ii)subject to paragraph (4), the relevant subsequent bill payer; and
>
> (b)subject to paragraph (5), each person (if any) who, at the time the confirmation is sought, is the owner of the property.
>
> (2) The green deal provider must ensure that the confirmation or a copy of it is attached to the plan at the time it is entered into.
>
> (3) The confirmation to be obtained from a person ("A") under paragraph (1) must be in writing and contain—
>
> (a)consent by A to—
>
> (i)the amount of the payments in instalments to be made under the plan;
>
> (ii)the intervals at which they are payable; and
>
> (iii)the period for which they are payable; and
>
> (b)an acknowledgment by A that if the plan is entered into and A becomes the bill payer—
>
> (i) A must pay instalments under the plan for such time as A is the bill payer, and
>
> (ii) the other terms of the plan which bind a bill payer will bind A.
>
> (4) Paragraph (1)(a)(ii) does not apply to a relevant subsequent bill payer who, at the time a plan is to be entered into, will be the improver.
>
> (5) Paragraph (1)(b) does not apply to a person who, at the time a plan is to be entered into, will be—
>
> (a)the improver; or
>
> (b)a person to whom paragraph (1)(a) applies.

55.— Eligible complaints – breach of the consent provision

(1) An eligible complaint in respect of a breach of the consent provision is a complaint—

(a) by a person ("A") described in paragraph (2) to the green deal provider; and

(b) which the provider is required to handle under the code of practice.

(2) A is a person whose permission or consent would have been required for the installation of an improvement at the property under the green deal plan, had the permission or consent been sought at the time the complaint is made to the green deal provider.

59.— Referral of eligible complaints to the Secretary of State

(1) An eligible complaint (except one to which paragraph (2) [or (3)]1 applies) may only be referred to the Secretary of State by an ombudsman and where—

(a) the complaint has been referred to and considered by the ombudsman in accordance with that ombudsman's scheme; and

(b) either—

(i) the complaint has not been resolved to the satisfaction of the complainant; or

(ii) having considered the complaint, the ombudsman considers that it may be appropriate to impose cancellation, reduction, withdrawal or suspension.

(2) An eligible complaint in respect of the disclosure and acknowledgment provisions may only be referred to the Secretary of State by a green deal provider or a recipient.

(3) An eligible complaint in respect of a breach of the relevant requirements by a green deal assessor may only be referred to the Secretary of State by the complainant where the complaint—

(a) has been referred to and considered by the certification body on whose membership list the assessor is included; and

(b) has not been resolved to the satisfaction of the complainant.

9. Under regulation 61, a breach of the consent provision occurs where the improver has failed to obtain a necessary permission or consent to the installation of an improvement at a property under a green deal plan.

10. Pursuant to regulation 65(3), where cancellation is imposed on the relevant person, the Secretary of State must impose compensation (subject to an exception where a person other than the improver is wholly or partly responsible for the breach). The quantum of such compensation is for the Secretary of State to determine, but may not exceed the sum payable of the definition of compensation in regulation 51:-

> "*compensation*" means that the Secretary of State requires the improver or the notifier, as applicable, to pay to the relevant person—
> (a) except where paragraph (b) applies, an amount (as a fixed sum or in instalments) representing—
>> (i) the indebtedness of the bill payer and any subsequent bill payer under the green deal plan at the effective date less the rebate on early settlement; and
>> (ii) a compensatory amount being an amount equal to the cost which the relevant person has incurred as a result of the indebtedness under the green deal plan being discharged at the effective date..

11. Pursuant to regulation 79 of the 2012 Regulations 'Any sanction imposed under this chapter must be proportionate to the breach in relation to which it is imposed'.

12. In *Leach v Secretary of State for Business, Energy, and Industrial Strategy* NV/2019/0019, Judge Alison McKenna (the Chamber President) considered the first appeal under the 2012 Regulations, and set out the relevant statutory framework for the appeal. The right to appeal is set out in the 2012 Regulations as follows:-

> 87.— (1) Subject to paragraph (5), any person directly affected by a decision of the Secretary of State—
>
> (a) to refuse an application for authorisation under Part 3 to act as a green deal assessor certification body or a green deal installer certification body;
>
> (b) to impose or not to impose a sanction under Part 8,
>
> may appeal to the First Tier Tribunal.
>
> (2) The Tribunal must determine the standard of proof in any case.
>
> (3) The Tribunal may suspend a decision pending determination of the appeal.
>
> (4) The Tribunal may—
>
> (a) in relation to a decision under Part 3 or 8—
>
> (i) withdraw, confirm or vary the decision;
>
> (ii) remit the decision to the Secretary of State;
>
> (b) in relation to a decision whether to impose a sanction under Part 8, impose a different sanction or take different action.
>
> (5) A relevant energy supplier may not appeal under this regulation unless it is affected by a decision for a reason which is not connected with its collection of payments under a plan.

13. Judge McKenna explained the Tribunal's jurisdiction as follows:-

> 11…. The Tribunal's jurisdiction in determining an appeal under regulation 87 above is de novo i.e. it requires the Tribunal to stand in the shoes of the Secretary of State and to take a fresh decision about whether to issue a sanction notice - and if so which type of sanction notice - on the evidence before it at the hearing, giving appropriate weight to the reasons for the Secretary of State's decision. The nature of such an appeal is described in *El Dupont v Nemours & Co v ST Dupont* [2003] EWCA Civ 1368 by May LJ at [96].
>
> 12. In taking a fresh decision, I note that the Tribunal is not required to undertake a reasonableness review of the Respondent's decision, but instead to decide whether it would itself issue the same Notice on the evidence before it. The Tribunal has no supervisory jurisdiction – see *HMRC v Abdul Noor* [2013] UKUT 071 (TCC).

13. In *R (Hope and Glory Public House Ltd v City of Westminster Magistrates' Court* [2011] EWCA Civ 314, the Court of Appeal decided that "careful attention" should be paid to the reasons given by an original decision-maker, bearing in mind that Parliament had entrusted it with making such decisions. However, the weight to be attached to the original decision when hearing an appeal is a matter of judgment for the Tribunal, "taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given in the appeal". The approach recommended in *Hope and Glory* was approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] 1 WLR 47995.

14. Pursuant to rule 15 (2) (a) (ii) of the Tribunal's Rules, the Tribunal may when hearing an appeal admit evidence whether or not it was available to the previous decision maker. The burden of proof in a de novo appeal rests with the Appellant as the party seeking to disturb the status quo. The usual standard of proof to be applied by the Tribunal in making findings of fact is the balance of probabilities. Regulation 87 (2) requires the Tribunal to determine the appropriate standard of proof in hearing an appeal against a Sanction Notice. Having considered the parties' submissions, I agree with them that the civil standard ('the balance of probabilities') should be applied in this case.

FACTUAL BACKGROUND

14. The Appellant managed various properties as agent for Mr and Mrs Rai, who owned the freehold of the Property in question. In addition, however, the Appellant held a leasehold interest, running for three years from 1 November 2014, in the Property. He sub-let the property to tenants who inhabited it.

15. On 2 April 2015 the Appellant entered into Green Deal Plan ID AD0000211151 in relation to the Property. On 18 February 2019, the Secretary of State received a complaint from Mrs Permjit Rai, one of the freehold owners of the Property. That complaint indicated she had previously complained to the green deal provider (pursuant to regulation 55) and was treated as an eligible complaint referred to the Secretary of State (pursuant to regulation 59). Mrs Rai's complaint said:-

I am a Landlord and on one of my properties an ex tenant has been able to take out a green loan and of £9277.34 and attach this to my property with my knowledge. I have been trying to sort this out now for over a year and am constantly being passed from pillar to post without any real solution for this.

I know who ever worked for the green loan company by law didn't do his job by correct protocol because had he had looked on the land registry he would have seen that this person who took out and signed the green deal did not own the property.

When I contacted the loan company originally they said they would be able to sort this and have eight weeks in which to do so, now they have temporarily stopped automatic add on payments to my new tenant until they say they have investigated further.

This has caused me and my new tenant considerable amount of stress. Please can you help. I am attaching a photo of the original contract."

16. The complaint was considered by the Ombudsman & Investigations Services (OIS) on behalf of the Secretary of State. The OIS wrote to the Appellant on 19 June 2019, seeking confirmation that the Green Deal Plan was disclosed to Mrs Rai, but he did not respond. The OIS then wrote again on 25 July 2019 and repeated the request. The Appellant responded explaining that he was not the occupant at the time, but that he had applied for Green Deal finance on behalf of the occupant. The Appellant's email of 12 August 2019 is a full explanation of what happened and so it is worth setting out the majority of it:-

Please note that I was responsible for all "cosmetic" maintenance and The Rai's should have been responsible for all structural maintenance (including gas and plumbing works); however, The Rai's would always say "all" maintenance was my responsibility when I approached them with maintenance works that required their attention.

19 St Johns Close had tenants residing in the property (I acted as a managing agent) and when the old heating system failed a gas safe engineer informed me that it needed replacing - it was an old hot air system that was pumped around the property using vents - it was estimated that it was over 20 years old.

When asking The Rai's for assistance with this, it was again refused and suggested that I resolved it myself at my cost. As the property was rented to multiple tenants, the council environmental health department was involved so this had to be resolved imminently.

When searching for new boiler finance, I was referred to a company JKL Heating Limited (this was the company that facilitated the Green Deal with the property). They informed me that they would need to speak with my tenants as based on their circumstances they could qualify for a free boiler whereby the payments would be taken from the energy usage on a month by month basis in an affordable manner. It was positioned to me that it was the tenants would need to apply as it was based on their circumstances.

Based on this information, JKL Heating Limited completed an application with the tenants and confirmed that they qualified. I would need to sign on behalf of the tenants, and the installation would be booked in.

When informing the Rai's that I had resolved the problem and a new heating system was installed, they were delighted as they saved nearly £10,000. The tenants were happy with the payments.

However, after my relationship with The Rai's broke down and they took back the property, the existing tenants moved out, and new tenants have moved in and are complaining about payments. This has resulted in the Rai's complaint.

I no longer have anything to do with the property or with the Rai's. When the Rai's were first informed about the situation they were delighted - it is only because their new tenants have threatened to move out based on the energy bills which is why they have made this complaint.

From my side, I believe the Rai's were aware of the situation and were delighted with the outcome as they did not have to pay for the new system to be installed. I previously managed ten properties for the Rai's and despite the contract stipulating that they were responsible for structural maintenance (including plumbing and gas) they never once paid for any repairs and when the councils were informed I had to get the repairs completed myself at my cost.

Additionally, JKL Heating Limited was later found to be fraudulent in their activities and understand they have been closed down. They mis-sold the Green Deal as they surely should have gone to the Rai's as opposed to me as the managing agent.

17. Mrs Rai also sent an email dated 3 June 2019 in which she explained:-

This is the green deal taken out on the above property by Mr Kevin Brittain in April 2015. I let the property to him for three years. I am also enclosing tenancy agreement. I gave I'm ten of my rental properties to manage and let out for three years in return for guaranteed rent regardless of whether they were let or not. He handed them all back by February 2018. He had defaulted on paying me the rent and left all of the properties in a terrible state of repair with council tax, gas and electricity bill outstanding. Since then I have had to get all the work done on these houses to get them back to a decent state to rent out again.I have a whole folder with proof of bills , receipts for repairs which had to be done and have constantly been in touch with him to give me the money he owes me. At first he started paying £500 per month for eight months then that stopped and meeting after meeting he has moved the dead line for which he was supposed to get the money to me. I also have proof of this on my husbands phone he has now just last week moved the dead line again which was end of my to June 19th this month. I am in the process of seeing a solicitor to take him to court. He has lied and gained our trust to let him manage our properties and left us out of pocket of £35,000 plus.

I knew nothing about the green deal until I repaired the property and let it out through Shires letting agent in May 2018. My new tenant has been in the house since but shortly after moving she noticed her gas and electric bills were high. After numerous call to her supplier they confirmed to her that she was paying daily for a green deal loan which was automatically added to her meter. This has caused a great deal of distress and worry to her and us , she has told us she will not be able to continue living at the house unless this has been cleared.

I am totally shocked that Kevin Brittain has been able to take out the loan of £13858.02 against my house as his name is not on the land registry and that is vital in checking before signing out a loan. Also to this day I think he has said he put in a new boiler with that but what else had been done with all that money?

Please contact me if you need any more proof but this has been causing me great stress and worry and has been going on now for what feels like a long time.

18. On that basis, the OIS produced a report dated 21 August 2019 to the Secretary of State that recommended that the sanction of cancellation should be imposed on GDFC Assets Limited (GDFC), which benefits from the relevant Green Deal

Plan and is the 'relevant person' as defined by regulation 51, and that the sanction of full compensation should be imposed against the Appellant as he had failed to comply with regulation 36 of the 2012 Regulations:-

> We recommend that in line with Framework Regulation 65, the SoS imposes cancellation of the Green Deal Plan on Mrs Permit Rai (or the tenant currently occupying 19 St John's Close). This is because consent was seemingly not obtained by the provider. We also recommend that the improver, Mr Kevin Brittain, pays full compensation to GDFC Assets Ltd, in accordance with Framework Regulation 66 (2)(b).

19. Subsequently, on 30 October 2019, the Secretary of State issued a notice pursuant to regulation 72 indicating her intention to impose the sanction of cancellation on GDFC (as the relevant person) and full compensation further to cancellation on the Appellant.

20. Further representations were received from the Appellant, stating that he had informed Mr Rai that he might be able to get a new heating system installed if the tenants qualified through the government deal. These state as follows, in an email dated 17 March 2020:-

> Please refer to the agreement between myself and Mr & Mrs Rai (attached) and specifically clause 4.1.5. - where it states I am liable for all cosmetic maintenance - all major maintenance including major plumbing and gas fell on Mr and Mrs Rai's responsibility. At the time there were vulnerable tenants living in the property (I can provide tenancy agreements if required) at this time and Mr & Mrs Rai were aware that the heating system was around 20 years old and failed regularly. I had maintained and repaired this system a number of times since the agreement was in place but it reached a stage where it had to be replaced. I had this discussion with Mr Rai and he did not want to know and pushed it back to me to sort. The vulnerable tenants that were housed were without heating and it was when they passed me a document (they received in the post) referring to the green deal. I mentioned to Mr Rai that I may be able to get a new system installed if the tenants qualify through the government deal and he was delighted that I was sorting this.
>
> This was a conversation in Mr Rai's shop as I would meet with him monthly regarding his properties. The tenants were planning on staying in the property for the long term and when the installation was arranged

> they were understanding that the bills would be increased to cover the repayments.
>
> Everything was OK until the point when the agreement between myself and Mr and Mrs Rai came to an end and the existing tenants were relocated.
>
> Mr and Mrs Rai's new tenants were complaining about the increase in utility payments and Mr and Mrs Rai were then trying to pursue me as they stated it would have been cheaper to replace the system themselves (which there were not willing to do when approached).
>
> If you continue with this claim against me I will have no alternative but to take this to a tribunal as Mr and Mrs Rai were not willing to consider the welfare of the tenants at the time and I had to ensure that I did not have tenants living in unhabitable conditions (without heat). At the time Mr and Mrs Rai were delighted with the outcome and the previous tenants were fine. It was when the agreement came to an end that Mr and Mrs Rai made the complaint.
> I personally believe this to be due to the cost of this specific installation as it was also arranged to have a Green Deal installation at another of Mr and Mrs Rai's properties 19 Harewood Terrace, Haverhill (due to the previous vulnerable tenants living there) and as the installation was less expensive the new tenants are not complaining about the utility bills, therefore, Mr and Mrs Rai have not complained to you about this.

21. The Secretary of State states that those representations were taken into account, together with the evidence from Mrs Rai, and the report from the Ombudsman. On 9 June 2020 he issued a decision notice imposing the same sanctions as proposed in the intention notice. In giving his reasons, the Secretary of State said:

> 4. The Secretary of State has carefully considered the representations made and has taken them into account in his assessment of whether there has been a breach or breaches of the consent provision (as defined in regulation 61 of the Framework Regulations) and in his decision as to what sanctions, if any, should be imposed in consequence of the breach (under regulation 65 of the Framework Regulations).
>
> 5. The Secretary of State notes that Clause 12 of the Plan contains an acknowledgement that the 'improver' is aware of the requirement to obtain the written consent of the owner and bill payer prior to the Plan

being entered into. Mr Brittain has signed the Plan as the improver to acknowledge this and has obtained the consent of the tenant as bill payer, which indicates he was aware of the need to obtain the relevant consents.

6. In the representations that Mr Brittain made prior to the issuance of the Intention Notice, he stated that he informed the owner, Mrs Rai, that a new heating system had been installed at the property after the Plan was entered into. It appears to the Secretary of State that there is a slight inconsistency between this and Mr Brittain's representations made on 17 March 2020 where he stated that he informed Mr Rai that he might be able to get a new heating system installed if the tenants qualified through the government deal.

7. In any event, even where it is the case that Mr Brittain informed Mr Rai of the possibility of installing a new heating system via a government scheme and then advised Mrs Rai of the details of the green deal once it had been entered into, this is not sufficient to comply with the requirements under regulation 36 of the Framework Regulations. Regulation 36 requires that written confirmation must be obtained from the owner of the property prior to the plan being entered into and this confirmation must contain specific consent to the amount of the payments in instalments, the intervals at which they are payable and the period for which they are payable.

8. The confirmation must also contain an acknowledgement that if the owner becomes the bill payer, the terms of the plan will become binding on them and they will be liable to pay the instalments due. Mr Brittain has not provided any evidence that such written consent was obtained from Mrs Rai as owner of the property, either before the plan was entered into or retrospectively.

22. The Secretary of State awarded the following sanctions:-

Cancellation. Pursuant to regulation 65(2)(b) of the Framework Regulations, the sanction of cancellation is imposed on GDFC Assets. GDFC Assets is now the “relevant person” for the purpose of the Framework Regulations, the Green Deal Provider’s authorisation having been withdrawn. The effective date for this sanction is 18 February 2019 (the "Eligible Date"), the date on which Mrs Rai made her complaint to the Secretary of State.

13. Compensation. Pursuant to regulation 65(3)(a) of the Framework Regulations, the sanction of compensation is imposed on Mr Brittain. Mr

Brittain must pay the sum of £7,898.71 to GDFC Assets. The amount has been calculated as at today's date. This amount comprises the outstanding capital at the effective date, together with the interest and servicing fee accrued between then and 3 June 2020. The level of compensation will continue to increase as interest and service charges continue to accrue (currently at a rate of £8.82 per week).

THE APPEAL

23. The Appellant appealed on 10 June 2020. The appeal document states:-

> The Green Deal Heating System was installed with the knowledge of the owners of the property. The owners were not prepared to pay for a new heating system to be installed even though this was their legal responsibility as per the agreement between us. When they were made aware of the Green Deal being applicable due to the tenants circumstances they were happy to proceed as it saved them several thousand pounds.
>
> I am devastated that I have been made liable for the debt as I was only the managing agent acting in the best interest of the vulnerable tenants that were housed at the property.
>
> It was the owner's legal responsibility to replace the heating system and they were not prepared to do so leaving the vulnerable tenants without heat. I acted in the best interest of all parties to ensure that the vulnerable tenants were not without heat and the owners were fully aware of this.

24. In the outcome section of the appeal form the Appellant has written:-

> I am seeking to be removed from the liability of the Green Deal Heating System debt as I made everyone aware of the situation. I am being wrongly made liable on the grounds of not having anything in writing from the owners to arrange for the heating system to be installed even though I had verbal agreement which the owners are denying.
>
> I will attach the agreement between myself and the owner which clearly states they are liable for replacing the heating system.

25. Following the appeal, Mrs Rai was made a Respondent at her request on 19 August 2020, and has made a statement dated 13 September 2020 which states:-

> 3. I had no knowledge of the Green Deal loan and have never given any written or oral permission for Kevin Brittain to take out any loan against my property.
>
> 4. The first time I was made aware of this loan was when the property was managed by myself and my private tenant discovered that her bills were very high, after her enquiries she uncovered that a loan had been attached to our property.

26. GDFC confirmed by email on 26 August 2020 that it did not wish to make representations in the appeal.

27. There have been no further submissions from the Appellant who has consented to this appeal being dealt with on the papers.

28. The Secretary of State has filed a response to the appeal (prior to the receipt of Mrs Rai's statement.

29. The Response points out that two matters do not seem to be in dispute. The first is that the Appellant did not obtain the written confirmation from the freehold owner as required.

30. The Response submits that:-

> The purpose of this written confirmation is clear, it is to enable all parties to be sure that a person with an interest in the property, who will therefore be bound by the Green Deal Plan, is fully cognisant of the existence of the plans and of its terms.
>
> …
>
> Failure to comply with that requirement is a serious breach of the Regulations.

31. The second matter is that Clause 12 of the Green Deal Plan signed by the Appellant contains an acknowledgement that the 'improver' is aware of the requirement to obtain the written consent of the owner and bill payer prior to the Plan being entered into, and the Appellant has signed the Plan as the improver to acknowledge this.

32. The Response points out that there is also a factual issue as to the extent which the Appellant informed the freeholder (if at all that) he was entering into a Green Deal Plan. Mrs Rai's statement says she was completely unaware that the Appellant had entered into the Green Deal Plan in relation to the Property. It is pointed out that the Appellant's account is inconsistent.

33. I note that in his email of 12 August 2019 he simply says that he informed Mr and Mrs Rai that the heating had been resolved, and that 'I believe the Rai's were aware of the situation'. The Appellant does not actually say in this email that he told the Rais about the Green Deal. In his email of 17 March 2020 the Appellant simply states that 'I mentioned to Mr Rai that I may be able to get a new system installed if the tenants qualify through the government deal'. It was not until the Appellant completed his appeal in June 2020 that he claimed 'The Green Deal Heating System was installed with the knowledge of the owners of the property'.

34. The Secretary of State points out that there are no contemporaneous documents whatsoever to support the Appellant's claim in his appeal, and notes that the Appellant would have been aware from Clause 12 of the Green Deal plan of the need to get written confirmation from the freeholder. It is submitted that the fact that the tenancy agreement placed the freeholder remained responsible for keeping the heating system in good repair did not justify the Appellant in arranging a replacement without any written confirmation of the freeholders' agreement.

DISCUSSION

35. In my view, as in the *Leach* case, the appropriate burden of proof to apply to the Appellant is that of the balance of probabilities. On the written materials I have seen and detailed above it is clear that the Appellant did not ensure that the requirement for written consent from the freeholder was complied with. However, I also agree with the Secretary of State that the Appellant has not established that he made the freeholders aware, in any meaningful way, that he intended to enter into the Green Deal plan, or of the substantive details of the plan.

36. In light of the factual findings above, in my view the decision to impose the sanction of cancellation and a requirement for full compensation was proportionate to the breach in relation to which it was imposed. In my view the breach in question was, as the Secretary of State submits, serious and severe. The requirement to obtain written consent provides property owners with important protections under the 2012 Regulations, and ensures that they are aware that they will be bound by a Green Deal Plan. In this case the Appellant's versions of events are vague and contradictory as to what he told the freeholders and certainly he does not suggest that written consent of the freeholders was sought. The Appellant knew or ought to have known that he was required to obtain the freeholders' consent, and had obtained the consent

37. I agree with the Secretary of State that cancelling the plan and imposing a requirement to pay compensation is rationally connected to the objectives of ensuring that the 2012 Regulations are complied with, and ensuring that the cost of failing to obtain the consent of the freeholders is met by the Appellant who failed to comply with the 2012 Regulations.

38. Cancelling the plan means that Mr and Mrs Rai are no longer subject to an obligation to which they have not agreed to in the way required by the 2012 Regulations. Full compensation means that GDFC is recompensed for the Appellant's actions.

39. On that basis the appeal is dismissed.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 16 December 2020