



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AG/LDC/2019/0101**

Property : **17,055 properties in various regions**

Applicants : **The Guinness Partnership Ltd (1)
Guinness Housing Association Ltd (2)
Guinness Care and Support Ltd (3)**

Representative : **Anthony Collins Solicitors LLP**

Respondents : **17,055 tenants in various regions**

Type of application : **To dispense with the requirement to consult**

Tribunal Member : **Judge N Hawkes**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of paper determination : **19 August 2019**

DECISION

Background

1. Following recommendations from their energy broker Inenco Group Limited, the applicants wish to enter into qualifying long-term agreements with energy suppliers for the bulk purchase of electricity and gas supplies for an initial period of four years from 1 October 2019 to 30 September 2023 (with an option to extend the contract for a further year).
2. The applicants seek dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) from the consultation requirements under section 20 of the 1985 Act on the grounds that, if dispensation is granted, they will be able to take advantage of more competitive energy prices.
3. The applicants state that, due to the volatile nature of the energy market (with energy prices potentially changing 3-20% within a day and 100% over the course of a year), they would be unable to achieve significant cost savings for the benefit of their tenants if they were required to carry out a statutory consultation.
4. The applicants also state that, if energy is purchased as and when a competitive price is identified by the brokers on the wholesale energy markets, they will be unable to provide estimated costs in advance to tenants.
5. The Tribunal has been informed that Inenco Group Limited act for a number of housing associations and that the applicants will be part of a £1/2 billion ‘pot’ which is enabling housing associations across the country to get value for money for their tenants in respect of energy costs. The applicants state that purchasing energy directly from the wholesale market further secures competitive pricing.
6. The application is dated 21 June 2019 and the respondents are 17,055 tenants situated in various regions.
7. Directions of the Tribunal were issued on 20 July 2019, which included provision for the applicants to inform the respondent tenants of the application and provision for any respondent who opposed the application to send a reply form to the Tribunal by 29 July 2019.
8. The applicants requested a paper determination and no application has been made by any of the respondents for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 19 August 2019.

The applicants’ case

9. The applicants reply upon a witness statement of Mr Daniel Moore, a Category Manager, dated 21 June 2019; a report prepared by Mr Daniel

Rapley, a Procurement Specialist, dated 1 August 2019; and a number of other documents contained in a bundle which the applicants have filed in accordance with the Tribunal's Directions.

10. Mr Moore confirms that the application concerns 17,055 tenants and leaseholders of the applicants from whom the cost of energy for communal areas is recovered by way of a variable service charge.

11. Mr Rapley states:

“Energy is a commodity and trades on the energy market. With prices changing minute by minute, competitive quotes for energy are only held for a matter of hours rather than the 60 days needed to consult residents. Purchasing energy from the wholesale market further secure competitive pricing as it also negates the current need to place all volume on a single day of the year.”

12. Mr Rapley also confirms the accuracy of statements made in the applicants' application.

The respondents' case

13. One of the respondents has made representations opposing the applicants' application. This respondent states that the name of the Category Manager has been redacted on the documents which they have received. They also raise concerns about the current level of charges and the heating/lighting arrangements at their property.

14. The Tribunal has been made aware that the relevant Category Manager is Mr Moore. It appears from a letter written by Mr Moore in response to the objection that his name was redacted in the copy documents which were made available to tenants solely in order to ensure that enquiries were sent to the appropriate place rather than directly to Mr Moore.

15. This determination does not concern the issue of whether any current or future service charge costs are reasonable or payable and it does not concern the heating/lighting arrangements or other facilities at any particular property.

The Tribunal's determination

16. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.

17. Where section 20 applies to any qualifying long term agreement (as is the case in this instance), each qualifying tenant's contribution to the

costs payable in respect of the relevant agreement is limited to £100 per service charge year unless the consultation requirements have either been complied with or dispensed with.

18. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
19. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
20. In all the circumstances and having considered:
 - a. the application and the evidence in support, which is summarised above;
 - b. the nature of the objections which, for the reasons set out above, do not focus on the subject matter of this application; and
 - c. the fact that the proposals are of potential benefit to the respondents and only one out of 17,055 respondents has sought to oppose the application,

the Tribunal determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable in all the circumstances to dispense with the statutory consultation requirements in respect of the proposed agreements for the period 1 October 2019 to 30 September 2023.

21. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

Judge Hawkes

Date 19 August 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).