



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

<b>Case Reference</b>	:	<b>LON/00AM/LDC/2019/0174</b>
<b>Applicant</b>	:	<b>Origin Housing Limited</b>
<b>Respondents</b>	:	<b>Approximately 6,700 households in various regions</b>
<b>Properties</b>	:	<b>Various properties in various locations owned and managed by Origin Housing Limited</b>
<b>Type of Application</b>	:	<b>Application to dispense with consultation requirements in relation to a qualifying long term agreement; under section 20ZA Landlord and Tenant Act 1985</b>
<b>Tribunal Members</b>	:	<b>Judge Pittaway Ms S Coughlin MCIEH</b>
<b>Date and venue of Consideration</b>	:	<b>11 December 2019 10 Alfred Place London WC1E7LR</b>
<b>Date of Decision</b>	:	<b>11 December 2019</b>

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**DECISION**

**The Tribunal grants the application for dispensation from further statutory consultation in respect of a qualifying long-term agreement in relation to the supply of energy (electricity and gas) to the communal areas of most of its housing stock and, in some cases, the supply to individual properties.**

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## REASONS

### The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) dispensing with statutory consultation in respect of a qualifying long-term agreement in relation to the supply of energy (electricity and gas) to the communal areas of most of its housing stock and, in some cases, the supply to individual properties.
2. The Applicant is the freeholder and landlord of the various properties and the Respondents are the leaseholders of the same.
3. The application, made by Origin Housing Limited was received by the Tribunal on 7 October 2019. The Directions (as subsequently amended by the Tribunal) were issued by the Tribunal on 17 October 2019. The Directions listed the matter for a paper determination for the week commencing 9 December 2019, unless any party made a request for a hearing. There was no request for a hearing. The documents provided to the tribunal by the Applicant include a witness statement by Mr Leor Klier.
4. The application seeks dispensation in respect of a qualifying long-term agreement in relation to the supply of energy (electricity and gas) to the communal areas of most of its housing stock (approximately 6,700 residential units) and, in some cases, the supply to individual properties. It is intended that the agreement will start on 1 July 2020, on expiry of its current utility supply contracts on 30 June 2020 and will last for three years. The anticipated value of the contract is £5,000,000, which the Applicant states equates to £248.76 per unit per year (although it states that this will be subject to some variance on various factors specific to individual buildings; such as thermal efficiency, size and amount of lighting). The Applicant states that in the majority of cases the cost per unit will exceed £100 per unit, the threshold above which consultation is required.
5. The Applicant has requested dispensation so that it may take advantage of the cost savings to be achieved if it can accept a tender within a very short timeframe. The Applicant intends to use a tendering process to invite energy suppliers to join a framework agreement. This will be followed by a ‘call off’ procedure (a mini tender) under the framework agreement inviting the identified tenderers to respond to an “Invitation to Quote”. The Applicant states that it is in the nature of ‘call off’ competitions in utility tenders that tenderers are given 5 days in which to respond to the ‘call off’. The tenderers ordinarily hold the tariffs they provide for no more than one day, which effectively means that it is impossible to carry out section 20ZA consultation. The Applicant has been advised that if it were to require the tariffs to be fixed for an extended period of time, to permit the section 20ZA consultation, the tenderers would not respond or would apply an uplift of up to 30% on their tariffs. Further the Applicant wishes to have the flexibility to enter into a contract on short notice to take advantage of favourable tariffs, which it would

be prevented from doing if it had to follow the section 20ZA consultation process.

The Applicant has requested urgent dispensation from consultation as the value of the contract is such that it will have to be advertised in the Official Journal of the European Union (“OJEU”) and it will take time to run an OJEU tender, create the framework agreement, run the mini-competition under the framework agreement and arrange for the utility supply.

6. The Applicant has confirmed that a Notice of Intention has been sent by first class post to all the Respondents. In his witness statement Mr Klier submits that the purpose of the Notice of Intention is to advise the Respondents of the nature and requirements of the proposed contract, invite observations and invite nominations for alternative contractors and that the Notice of Intention provided to all the Respondents did all these things.

7. The Directions invited any Respondent/leaseholder who opposed the application to submit a response form to the Tribunal and to make any statement of response to the Applicant by 18 November 2020. There were no representations received by the Tribunal from any of the Respondents and the Applicant confirmed to the Tribunal that it had not received any representations in response to the Tribunal’s Directions.

### **Determination and reasons**

8. Section 20ZA(1) of the Act provides:

*“Where an application is made to a leasehold valuation 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 the determination if satisfied that it is reasonable to dispense with the requirements.”*

9. Having considered the Applicant’s submissions and the evidence it provided, that it had notified the Respondents of its intention to apply for dispensation, the Tribunal considers it reasonable to determine that the Applicant may dispense with the consultation requirements of section 20ZA of the Act in relation to the supply of energy (electricity and gas) to the communal areas of most of its housing stock and, in some cases, the supply to individual properties.

10. In reaching its decision the Tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

11. This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonable cost of the qualifying long-term agreement.

12. As directed in paragraph 9 of the Tribunal’s Directions the Applicant should now add this decision to its website and confirm to the Tribunal that it has done so.

Name: Judge Pittaway

Date: 11 December 2019

### **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.