



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

**Case Reference** : **MAN/OOCX/LDC/2019/0024**

**Properties** : **Various Residential Leasehold Properties within the Incommunities and Sadeh Lok Housing Associations' Portfolios**

**Applicants** : **Incommunities Group Limited and Sadeh Lok Housing Association**

**Respondents** : **Leaseholders of the Properties**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 20ZA**

**Tribunal Members** : **Niall Walsh (Deputy Regional Valuer)  
Laurence Bennett (Tribunal Judge)**

**Date of determination** : **30 October 2019**

**Date of Decision** : **6 December 2019**

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**DECISION**

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## **Application**

1. Incommunities and Sadeh Lok Housing Associations apply to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987), in respect of a contract for the purchase of electricity for the Properties.
2. The Respondents are the individual Residential Leaseholders of the Properties.

## **Grounds and Submissions**

3. The application was received by the Tribunal on 24 May 2019.
4. The Applicants are the Landlord and Freeholder of the Properties.
5. On 19 August 2019 Judge Holbrook made directions in respect of the service of the application and arrangements for a response. It was directed that in the absence of a request for an oral hearing the application would be determined upon the parties' written submissions without a hearing.
6. The Properties are stated to include numerous residential properties in various locations across Bradford and Kirklees owned and managed by the Applicants. The total number of tenants and leaseholders who benefit from a communal electricity supply charged by way of service charge is 11,343.
7. The Applicants state in the application form that "The proposal is to enter into a 3-year collective contract. .... for the provision of electricity supply services from 1 April 2020. .... The Applicant has researched the energy market and consulted with specialist energy experts. As a result, the Applicant believes that this is the best value procurement route for the Respondents for the following reasons:
  - the collective approach means that energy can be purchased ahead of time to take advantage of dips in the market. The approach is proven to deliver below market-average rates across the year.
  - joining a collective means that the applicants' electricity volumes will be combined with those of other organisations This gives increased purchasing power and lower supply margins."
8. The Applicants state that they have consulted extensively with the Respondents and the recognised Tenants' and Residents' Association 'The Community Trust Panel' via letters and by responding to all observations or comments received between the 20 February and 22 March 2019 (when they outlined the associations intention to enter into a Qualifying Long-term Agreement) and again between 18 April 2019 and 24 May 2019 (when they advised of their intention to apply to the Tribunal for dispensation). No observations or comments were received bar 14 requests for clarification and one request to consider renewable energy options.

9. The Applicants submits that it is not possible or practicable to comply with consultation requirements because of the nature of the procurement exercise. However, the Applicants submit that they have taken appropriate steps to ensure the contract represents best value by the;
  - “ – appointment of a specialist energy broker with the ability to carry out an OJEU-compliant procurement exercise ....
  - selection of a collective procurement route that reduces supplier margins and focuses on a low risk, best value purchasing strategy.”
10. The Tribunal received one submission from a Respondent raising an objection and requesting an oral hearing. However, this related to a completely unconnected matter, a planning application, and a procedural Judge determined that that this response would not be treated as being connected with the current proceedings. The few remaining responses did not raise any objections to this application and in the main raised concerns as to their liability to pay various elements of the service charges being demanded. These are however not matters which fall to be considered in determining this application.
11. With the one exception detailed above in paragraph 10, neither the Applicants nor any Respondent requested a hearing. The Tribunal convened without the parties to make its determinations on 26 March 2018.

## **Law**

12. Section 18 of the Act defines “service charge” and “relevant costs”.
13. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
14. Section 20 of the Act states:-

### **“Limitation of service charges: consultation requirements**

- (1) Where this Section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
  - a. complied with in relation to the works or agreement, or
  - b. dispensed with in relation to the works or agreement by (or on appeal from) the First Tier Tribunal
- (3) This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”

- (4) The Secretary of State may by regulations provide that this Section applies to a qualifying long term agreement
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
15. “The appropriate amount” is defined by regulation 4 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant in respect of that period, being more than £100.00.”
16. Section 20ZA(1) of the Act states:-

"Where an application is made to a 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."

### **Tribunal’s Conclusions with Reasons**

17. We considered the written evidence accompanying the application. We note that there have been no relevant submissions from the Respondents.

Our conclusions are:-
18. It is not necessary for us to consider at this stage the extent of the service charges that would result from any agreement for electricity supply payable under the terms of the Respondents’ leases and tenancy agreements. If and when such is demanded and if disputed, it may properly be the subject of a future application to the Tribunal.
19. Taking into account the Applicant’s obligations we accept that a long-term agreement within the statutory definition is within the range of appropriate operational responses to discharge its responsibilities. Similarly, we find OJEU compliant processes appropriate procedure for this purpose.
20. Although the consultation proposed to take place is not compliant with the statutory requirements, we accept that Respondents have had broad notice and we have not identified a specific prejudice to service charge payers in the circumstances. We accept the submissions within the grounds of application regarding the urgency to ensure the chance of a competitive electricity supply agreement. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.
21. We conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).

22. Nothing in this determination or order shall preclude consideration of whether the Applicants may recover by way of service charge from the Respondents any or all of the cost of the electricity supply or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

**Order**

23. The Applicants are dispensed from complying with the consultation requirements in respect of the proposed agreement specified in the application.

**N Walsh**  
**Deputy Regional Valuer**  
**6 December 2019**