



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

Case Reference	: CHI/45UF/LDC/2022/0087/AW
Property	: Durrants Village, Faygate, Horsham, West Sussex RH12 4GB
Applicant	: Senior Living (Durrants) Limited
Representative	: Gowling WLG (UK)LLP
Respondent	:
Representative	:
Type of Application	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal member	: D Banfield FRICS Regional Surveyor
Date of Decision	: 22 November 2022

DECISION

- 1. The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of entering into a fixed energy contract (potentially for two or three years) across their portfolio.**
- 2. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

Background

3. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 6 October 2022 and relates to a qualifying long term agreement.
4. The Applicant describes the property as a *“Retirement village community with a mix of flats in purpose built blocks and houses.”*
5. The Applicant states that it *“wishes to enter into a fixed energy contract (potentially for two or three years) across their portfolio for the benefit of their residents in order to manage the volatile costs of energy prices. When the Applicant last obtained a quote there was an offer of £0.49/kWh for a three year period compared to a quote of £0.89/kWh for a 12 month period but the quotes expire after 48 hours. The current energy contract is due to expire at the end of September and the Applicant wants to fix the rate as soon as possible to ensure the best value for its residents.*

Further, *“The Applicant has confirmed that the residents have approved the terms of the QLTA and requested that the energy contracts be entered into as soon as possible.”*

Dispensation is sought because, *“ The timescales required by the consultation process pursuant to section 20 of the Landlord and Tenant Act 1985 preclude the Applicant from consulting with residents before a quote expires, as they only last 48 hours. Therefore, the Applicant would not be able to complete the consultation process and enter into a QLTA to fix its residents' energy charges.*

The recent change of government may mean further changes to the energy market and the Applicant would like to be able to react to these changes to ensure it obtains a competitive rate for its residents. In order to secure a competitive rate, the Applicant seeks dispensation of all of the consultation requirements for entering into a QLTA. If dispensation is granted, the residents would clearly not suffer any relevant prejudice, as the volatility of the energy market would almost guarantee a worse deal for the residents.”

6. The Tribunal made Directions on 26 October 2022 requiring the Applicant to send them together with a copy of the application to each **Respondent and the tenants' association listed in the application** and confirm to the Tribunal that this has been done. The required confirmation was received on 4 November 2022.
7. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents.

The Applicant confirmed on 15 November 2022 that no objections had been received from the lessees and they have therefore been removed as Respondents.

8. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
9. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

10. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) 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.

11. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following
 - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
 - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the

consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 12. The applicant's case is as set out at paragraph 3 above.

Determination

- 13. I accept that the supply of energy is subject to volatility of costs and that the normal procurement process following consultation with lessees would prevent the Applicant from benefiting from the potential cost savings that are available.
- 14. The test that I must apply in determining whether dispensation may be given is that set out by the Supreme Court in the Daejan decision referred to above. Clearly to remain on short term energy supply contracts when less expensive long-term contracts are available cannot be to the lessees' advantage. No Lessee has objected and the Tribunal is not therefore satisfied that they would be prejudiced by granting dispensation.
- 15. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of entering into a fixed energy contract (potentially for two or three years) across their portfolio.**
- 16. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
22 November 2022

RIGHTS OF APPEAL

- 1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.