



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

<b>Case Reference</b>	:	CHI/45UH/LDC/2023/0015
<b>Property</b>	:	Various properties of Worthing Homes - Flat 1 Murphy Court (& others), Grafton Road, Worthing, West Sussex, BN11 1QY
<b>Applicant</b>	:	Worthing Homes
<b>Representative</b>	:	
<b>Respondent</b>	:	-
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about a Qualifying Long Term Agreement - section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Members</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	29 March 2023

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**DECISION**

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**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 for the period 01/10/23 to 30/09/26.**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

**The Applicant is to make the Tribunal's decision available to each lessee to whom directions were sent.**

## Background

1. 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 by email on 1 February 2023.
2. The applications concern various properties of Worthing Homes, details of which are given in the description of building list provided with the application. The Applicant explains that:

*“There are 53 blocks as part of the application, mix of purpose built flats, converted flats, maisonettes and flats above underpass.”*

3. The Applicants explains further:

*“Worthing Homes recognises the difficulties our residents are facing in this difficult financial climate, in this cost of living crisis and we want to maximise our opportunity for securing the best energy costs as soon as we can for energy from October 2023.*

*Energy as a commodity is volatile with energy prices changing between 3% - 20% within the day and 100% over a year.*

*Wholesale energy prices are more competitive. We want to obtain the best deal, and enable energy to be purchased as and when a competitive price is identified on the wholesale market, to secure this benefit for our residents, especially in these difficult financial times.*

*Back in 2019 we appointed The Inenco Group, to procure energy on our behalf, for the communal lighting and heating to our buildings. The Inenco Group provide a bespoke energy finding service, they work with many other housing providers across the country. They manage energy costs by seeking out the most competitive prices on the wholesale market.*

*We have decided to enter into another programme with The Inenco Group, who will be procuring energy on our behalf. The period of the agreement will be from 01/10/23 to 30/09/26.*

*The energy market is increasingly volatile and our residents would benefit from any reduced increases for the period of the contract. Purchasing from the wholesale market secures competitive pricing as it negates the need to place all volume on a single day of the year. To achieve and obtain the best deal, is for the energy to be purchased as and when a competitive price is identified, and which is why we are respectfully seeking dispensation to enable that to happen, so we can enter into an agreement as and when a competitive price is identified.*

*We have written to our residents to make them aware that The Inenco Group will be providing energy procurement, due to their specialist knowledge of the market and access to wholesale pricing, explaining what we are trying to achieve, to try and secure the best deals in terms of energy. But as energy will be purchased as and when a competitive price is identified, the formal section 20 consultation process does not enable/allow Inenco to react quickly to changes in the energy market and secure the best deal available at that time, and this is why we are seeking dispensation of all of the section 20 requirements.*

*Working (sic) Homes seeks dispensation because we will be able to access longer contracts and therefore take advantage of more competitive energy prices.*

*In addition, we will be unable to provide estimated costs to residents. The energy will be purchased as and when a competitive price is identified by The Inenco Group on the wholesale energy market and so we will not be able to advise residents of the cost.*

*Inenco act for a number of housing associations, that is enabling associations across the country to get better value for money on energy costs for their residents.*

*Energy is a commodity and trades on the energy market. With prices changing minute by minute, competitive quotations for energy are only held for a matter of hours rather than the 60 days needed to consult with residents. Purchasing energy from the wholesale market further secures competitive pricing.”*

4. The Tribunal made Directions on 1 March 2023 requiring the Applicant to send them together with a copy of the application to each Respondent listed in the application and confirm to the Tribunal that this has been done. The required confirmation was received on 7 March 2023.
5. The Directions noted that those parties not returning the form and those agreeing to the application, whilst being bound by the Tribunal's decision, would be removed as Respondents. Twelve responses in support of the application were received and the Applicant confirmed on 23 March 2023 that no objections had been received from the lessees the Lessees have therefore been removed as Respondents.
6. 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.
7. 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**

8. 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.

9. 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**

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

## **Determination**

11. 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.
12. 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 enable lessees to benefit from less expensive long-term energy contracts must be to the lessees' advantage, no prejudice therefore being suffered. No Lessee has objected, and the Tribunal is not therefore satisfied that they would be prejudiced by granting dispensation.
13. **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 for the period 01/10/23 to 30/09/26.**
14. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
15. **The Applicant is to make the Tribunal's decision available to each lessee to whom directions were sent.**

D Banfield FRICS  
29 March 2023

### **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](mailto: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.