



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

Case Reference(s) : **MAN/16UD/LDC/2022/0066**

Properties : **1 – 20, Heysham Meadows and Flats 1 -40,
Heysham Gardens, Carlisle, Cumbria CA2 7RN**

Applicant : **Eden Housing Association**

Respondents : **Various Residential Long Leaseholders and
Assured Tenants**

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

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member S Wanderer**

Date of Decision : **15 June 2023**

DECISION

Order

1. The Tribunal determines that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the Applicant's entry into two qualifying long-term agreements in respect of the supply of gas and electricity to the Properties.

Background

2. By an application dated 23 December 2022, ("the Application"), the Applicant applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, ("the 1985 Act"), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together "the Consultation Requirements"), in respect of the entry into two qualifying long term agreements in respect of the supply of gas and electricity for the Properties.
3. The Respondents are the individual residential leaseholders/shared owners of apartments/houses at the Properties.
4. Directions dated 16 March 2023, ("the Directions"), were issued to the parties, in response to which the Applicant submitted written representations.
5. No submissions were received from any of the Respondents.
6. The Directions stated that the Application would be determined by the Tribunal "on the papers" in the absence of a request for a hearing from any of the parties. No request was received.
7. The determination of the Application was scheduled for Thursday 16 June 2023.
8. No inspection of the Property was undertaken by the Tribunal.

Evidence

9. The Applicant has responsibility for the management of the Property in accordance with the leases.
10. The Applicant states that it is just and equitable to grant dispensation from the Consultation Requirement because:
 - (1) through the use of an independent energy broker, it had obtained the best energy rates possible for the Respondents on a communal basis at that time. The supply is

communal and it is not possible for the Respondents to negotiate their own supply agreements;

- (2) both agreements are for 2 years from 1 December 2022 – 30 November 2024. Options for 6 and 12 month agreements were also considered but did not offer as low rates;
 - (3) further, the two agreements entered into offered a 20% reduction as compared with the rates offered on renewal of the existing agreements;
 - (4) in a volatile market, the two year term fixed rates offered protection for the Respondents against price fluctuations;
 - (5) the exceptional volatility of the market also imposed pressure on customers to enter into agreements within a matter of hours to fix rates. Such an environment did not allow for entry into a lengthy consultation process.
11. By letter dated 28 December 2022, the Applicant wrote to all of the Respondents advising them of the entry into the two supply agreements, setting out the circumstances and benefits of doing so and informing the Respondents of their application for dispensation from the Consultation Requirements.
 12. As stated above, none of the Respondents has made written submissions to the Tribunal in response to the Application.

Law

13. Section 20ZA(2) of the 1985 Act defines a qualifying long term agreement as “an agreement entered into, by or on behalf of the landlord...for a term of more than twelve months”.
14. Section 20 of the 1985 Act states:-

“Limitation of service charges: consultation requirements

Where this Section applies to any qualifying long term agreement..... the relevant contributions of tenants are limited.....unless the consultation requirements have been either:-
 - a. complied with in relation to the agreement, or
 - b. dispensed with in relation to the agreement by the First Tier Tribunal
15. Regulation 4 of the Regulations provides that s20 shall apply to a qualifying long term agreement if “...relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100”.
16. Section 20ZA(1) of the 1985 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 the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

Reasons

17. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the rationale for a consultation exercise, namely, to ensure that leaseholders are protected from paying more than would be appropriate.
18. The Tribunal noted, in particular but without limitation, the following of the Applicant's submissions:
 - (1) the Applicant had obtained independent specialist advice before entry into the two supply agreements;
 - (2) the Applicant had considered a number of options regarding the term of the agreements before concluding that the 24-month terms offered the best rates for the Respondents;
 - (3) the volatility of the energy market at the time of the negotiation of the two agreements imposed a time pressure on the Applicant which appeared to be incompatible with undertaking a consultation process.
19. The Tribunal further noted that there is no evidence of any financial prejudice to the Respondents.
20. **Determination**
21. Having regard to the Applicant's submissions, including, without limitation, the matters set out in paragraph 18 and the absence of any evidence of financial prejudice to the Respondents, the Tribunal concludes that, in accordance with Section 20ZA(1) of the 1985 Act, it is reasonable to dispense with the consultation requirements under s20 of the 1985 Act.
22. Nothing in this determination shall preclude consideration of whether the Applicant may recover by way of service charge from any of the Respondents any or all of their relevant contribution towards the cost of electricity and gas during the relevant period or the costs of this Application should an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

Judge C Wood

15 June 2023