



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

**Case reference** : **LON/00AW/LDC/2023/0236**

**HMCTS code:** : **P: PAPER REMOTE**

**Property** : **9663 residential leasehold properties managed by the Applicant.**

**Applicant** : **Southern Housing**

**Representative** : **Wesley Jolly (Southern Housing)**

**Respondents** : **The leaseholders of the 9,663 residential properties charged for gas and electricity**

**Type of application** : **Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**

**Tribunal member** : **Judge Robert Latham  
Stephen Mason FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **5 December 2023**

---

**DECISION**

---

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of a proposed long-term agreement(s) for the supply of electricity and gas for the next five years.

## **The Application**

1. The Tribunal has received an application from Southern Housing (“the Applicant”), dated 13 September 2023, seeking dispensation from of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. The Applicant has provided a witness statement from Kevin Jackson who is an employee of the eEnergy Group PLC (“eEnergy”), in support of the application. The Applicant has retained eEnergy as their energy consultant. Mr Jackson is the Strategic Solutions Director in eEnergy’s Public Sector Team.
3. The Respondents are 9,663 leaseholders. They pay a service charge for gas and/or electricity. The gas supply is for communal heating and hot water supplies. The electricity is supplied as part of the service charge. This application will not affect the individual utility contract which any leaseholder has for the supply of gas or electricity.
4. The Applicant proposes to enter into a Qualifying Long Term Agreement (“QLTA”) (or agreements) in respect of communal gas and electricity supplies. Their current annual contract is for both gas and electricity and expires on 30 September 2024. The Applicant intends to enter a new contract, or more than one contract, for periods of three to five years from 1 October 2024. They plan to enter the energy market as soon as possible with a view to signing a QLTA with a supplier or suppliers to take effect as soon possible.
5. A QLTA is an agreement for a term of more than twelve months. Section 20 of the Act requires a landlord to consult where the relevant contribution of any leaseholder may exceed £100. The Applicants have made this application as market volatility means that prices are often only held for a few hours and do not permit compliance with Section 20 consultation, which would take a minimum of three months.
6. The Applicant is satisfied that by procuring energy for communal use via the commodities market in this way, they will be able to minimise the risk of significant upward price movements impacting their leaseholders. Leaseholders will have stable prices which will allow for easier budgetting. The Applicant will be able to manage expenses more efficiently in drawing up the annual service charge budgets. This will be reflected in the level of service charge leaseholders are required to pay. In addition, leaseholders will also benefit from a reduced suppliers risk premium, reduced supplier’s margins and lower underlying energy costs
7. On 23 September 2023, the Tribunal issued Directions. The Tribunal stated that it would determine the application on the papers, unless any party requested an oral hearing. No party has done so.

8. By 6 October 2023, the Applicant was directed to write to each of leaseholders and to any residential sub-lessee and to any recognised residents' association concerned by email, hand delivery or first-class post, setting out the following:
  - (a) Informing them of the application;
  - (b) Advising them that a copy of the application (with personal details deleted), statement of case, supporting documents and a copy of these directions will be available on the applicant's website, advising them of the URL address, and notifying them that any response to the application should be made by 14 October 2023;
  - (c) Informing the leaseholders that if they wish to receive a printed copy of the application and these directions they should write to the applicants, who will then send printed copies (again, with any personal details deleted); and
  - (d) Advise the leaseholders that as the application progresses additional documents will be added to the website, including the final decision of the tribunal, stating clearly that the final decision is likely to be uploaded on or after 4 December 2023.
9. On 23 September 2023, the Applicant wrote to the Respondents to inform them of this application. On 5 October, the Applicant sent a further letter as the previous letter had incorrect details for the website.
10. On 9 November 2023, the Applicant filed a Bundle of Documents in support of their application. This has also been posted on their website. It includes the following: (i) Sections 7 and 8: Objections received from leaseholders (pages 1-56) and (i) Section 9: General Correspondence (at pp.57-86). The Tribunal has had particular regard to the detailed objections which have been made at p.1-2 (and the response at p.3-4); p.5-6 (which incorporates the Applicant's response); p.16; and p.37-47. On 30 November, a Supplementary Statement was filed by the leaseholder of 11 Clevedale Place.
11. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate 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.”
12. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements.** This application does not concern the issue of whether any service charge costs for electricity

and/or gas will be reasonable or payable. A leaseholder who subsequently considers that the charges have not reasonably been incurred may still make an application to the Tribunal for a determination under section 27A of the Act.

13. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. The Applicant has concluded that it is beneficial to enter into a long-term agreement (s) for the supply of electricity and gas and that this will secure best value for its leaseholders. This has been an approach which has been adopted by a number of social landlords. The Tribunal is satisfied that this is an approach to procurement that the Applicant is entitled to adopt.
14. An objector refers to the decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854. In that case, the landlord had failed to comply with the statutory duty to consult. In the current case, the Applicant is contending that it is not practical to do so, if it is to secure best value for their leaseholders and tenants. The Tribunal accepts that the energy market operates in such a way that that bids are requested and contracts are signed within a very short period. This may be as short as 24 hours. This precludes that statutory consultation period which would extend to some three months
15. This application does not address how the gas and electricity charges are to be apportioned to particular blocks or between leaseholders. The Applicant is rather seeking to secure best value for all its leaseholders and tenants. To some extent, the manner in which the costs are apportioned will be determined by the leases under which the leaseholders occupy their flats. In securing gas and electricity for the communal supplies which will be charged through the service charge, the Applicant may need to make a number of discretionary management decisions. The landlord is contractually obliged to act reasonably. This is subject to the Tribunal's jurisdiction under section 27A to determine whether the landlord has acted reasonably.
16. Some of the objectors complain of the manner in which their landlord has managed their flats. However, these complaints are not relevant to the current application. This Tribunal is rather concerned with the future, namely how their landlord secures gas and electricity at the most competitive prices. This is a management decision for the landlord, subject to the contractual obligation that the landlord must act reasonably.
17. The Directions made provision for the service of the Tribunal's decision. The Tribunal will email a copy of its decision to the Applicant and to the leaseholders who have opposed the application. The Tribunal has directed the Applicant either (i) to send a copy of the Tribunal's decision and appeal rights to all leaseholders; or (ii) to place a copy of this decision together with an explanation of the leaseholders' appeal rights on their

website within 7 days of receipt of this decision and to maintain it there for at least 3 months, with a sufficiently prominent link to both on their home page, or (if longer) until the new contract is entered into. In this way, leaseholders who have not returned the reply form will be able to view the tribunal's decision on dispensation together with their rights of appeal.

18. The Applicant has set up a website page to keep leaseholders informed of the progress on their energy procurement exercise, see: [www.southernhousing.org.uk/support-for-our-residents/energy-saving-advice/energy-dispensation](http://www.southernhousing.org.uk/support-for-our-residents/energy-saving-advice/energy-dispensation) The engagement strategy also includes Newsletters and emails. It is important that the Applicant should maintain this to ensure transparency and to assure their leaseholders that they are securing best value at a time when energy prices are volatile and are increasing.

**Judge Robert Latham**  
**5 December 2023**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made **by e-mail** to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).