



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

Case reference : **LON/00BG/LDC/2023/0234**

Property : **Various properties in the London Borough of Tower Hamlets as listed in the application**

Applicant : **Poplar Housing and Regeneration Community Association Limited (“Poplar HARCA”)**

Representative : **Roythornes Limited**

Respondent : **Various leaseholders as per the application**

Representative :

Type of application : **To dispense with the requirement to consult lessees about qualifying long-term agreements for the supply of gas, and electricity, s.20ZA Landlord and Tenant Act 1985**

Tribunal members : **Judge M Jones**

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

Date of decision : **29 January 2024**

DECISION

Summary of the Decision

The Tribunal dispenses with the consultation requirements in respect of the qualifying long-term agreements which are the subject of this application, to the extent that they have not already been complied with.

The Application

1. The Applicant applied by application dated 11 August 2023 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (*“the 1985 Act”*) for prospective dispensation from the consultation requirements imposed by Section 20 of the 1985 Act, to the extent that those requirements have not already been complied with, in respect of its intention to enter into qualifying long-term agreements (*“QLTAs”*).
2. The Property comprises various purpose-built blocks of flats within the London Borough of Tower Hamlets.
3. The application concerns (a) a prospective QLTA for the supply of gas, and (b) a prospective QLTA for the supply of electricity to the Property. The Tribunal understands that while this application has been pending, Poplar HARCA has in fact entered into a QLTA for the supply of gas.
4. The Applicant is the landlord under the various leases of the individual flats within the Property.

Paper Determination

5. In its application the Applicant stated that it would be content with a paper determination if the Tribunal considered it appropriate. By its directions made on 22 September 2023 the Tribunal allocated the case to the paper track (i.e. without giving directions for an oral hearing), but directed that any party had the right to request an oral hearing.
6. No requests for an oral hearing were made, and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
7. Before making this determination, the papers received including the Applicant’s hearing bundle comprising some 96 pages were considered, to ascertain whether the issues remained capable of determination without an oral hearing and it was decided that they were, in particular given the absence of any formal representations from the Respondent.

The Applicant’s Case

8. The Applicant proposed to enter into a QLTA for the supply of gas to communal heating and hot water boilers with effect from September 2023 (which date has now passed), which will affect approximately 200 variable service charge payers. It is understood that the Applicant has now entered into such a contract.
9. The Applicant also proposed to enter into a QLTA for the supply of electricity to the Property, again with effect from September 2023, which will affect something in excess of 2,500 variable service charge payers.

10. By entering into the proposed model of contracts, the Applicant states that it will be able to obtain a more competitive rate for the supply of energy than if it proceeded as a *'pay-as-you-go'* customer, where prices available under long-term agreements are described as substantially better than those available on a *'pay-as-you-go'* basis.
11. The Applicant seeks to enter into longer, fixed-term contracts as it considers that these types of contracts offer good value for money. Market conditions are described as very volatile, and entering into such contracts will offer the Applicant, and consequently the residents of the Property a degree of price stability over the term of the contract and to take advantage of economies of scale through the Applicant's substantial purchasing power.
12. The Applicant proposes to use a procurement framework that complies with all relevant statutory regulations, which it believes will enable it to source energy supplies at better prices and avoid paying fees to private organisations.
13. The difficulty with following the consultation regulations under s.20 of the 1985 Act is that the timescale involved would render it practically impossible to enter into such contracts, where the nature of the energy market is that bids are requested and contracts signed within a 24-hour period.
14. As to such consultation as has been carried out, in accordance with paragraph 1 of the Tribunal's directions, in or around early October 2023 the Applicant wrote to leaseholders advising that it had entered into a contract for the provision of gas in September 2023, notifying them that it had applied to this Tribunal for dispensation from the consultation requirements, and inviting written representations.

Responses from the Respondents

15. Two leaseholders completed the Tribunal's standard form indicating that each opposed the application, Apurva Suresh by form dated 19 October 2023 and Martina Bertazzon, by form dated 20 October 2023. While each notice contained an 'x' in the appropriate part of the form indicating that each objector had sent a statement in response to the Applicant, no such statements have been provided to this Tribunal, and by letters to each person dated 3 November 2023 from Roythornes Limited, the Applicant's solicitors, it was stated that no statement or documentation had in fact accompanied either form.
16. The grounds of objection are, accordingly, unexplained, and neither leaseholder requested an oral hearing.

The Law

17. Under Section 20(1) of the 1985 Act, in relation to any QLTA “*the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal.*”
18. Under Section 20ZA(1) of the 1985 Act:

“*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 long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*”
19. The specific consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
20. It is settled law that a landlord may ask for a dispensation in advance: see ***Daejan Investments Ltd v Benson*** [2013] UKSC 14; [2013] 1 W.L.R. 854 per Lord Neuberger at [56].

The Tribunal’s Decision

20. The Applicant accepts that both proposed agreements would each amount to QTAs, and based on the evidence provided I am satisfied that this is the case.
21. The correct statutory test to apply is whether is it reasonable to dispense with the consultation requirements in relation to the proposed QTAs.
22. I am satisfied that the test is met for the following reasons:
 - 22.1 The Applicant has explained its rationale for wishing to enter into the proposed forms of contract, and the reasons why it cannot do so whilst fully complying with the statutory consultation requirements. In particular, the fact that in this market bids are requested and contracts signed within a 24-hour period makes it impossible to enter into such contracts while also complying fully with the consultation requirements. It is quite common for social landlords to seek to enter into this type of contract when market conditions are favourable, and the potential advantages of doing so are self-evident.
 - 22.2 The Applicant has complied with the Tribunal’s directions and has consulted with the leaseholders to the extent that is practical.
 - 22.3 Importantly, not to grant the application would almost certainly be unreasonable, as it would be likely significantly to inhibit the

Applicant's ability to seek and/or obtain substantial costs savings from the procurement of energy on the wholesale market.

- 22.4 As summarised above, two objections have been received from specific leaseholders. No explanation has been given for either objection, and I am consequently unable to place any weight upon either objection.
- 22.5 There is no proper evidence before me that any of the Respondents has been prejudiced by the failure to consult fully.
23. Therefore, for the above reasons, I am satisfied that it is reasonable to dispense with the formal consultation requirements in respect of the QLTAs which are the subject of this application, to the extent that those requirements have not already been complied with.
24. **For the avoidance of doubt, this determination is confined to the issue of consultation prior to entering into the QLTAs, and does not constitute a decision on the reasonableness of any gas or electricity charges.**

Name: Judge M Jones

Date: 29 January 2024

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 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).