



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

**Case reference** : **LON/00BE/LDC/2022/0110**

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

**Property** : **Various residential leasehold properties  
within the areas of Greater London and  
the Home Counties**

**Applicant** : **Moat Homes Limited &  
Moat Housing Group**

**Representative** : **Devonshires Solicitors LLP  
(ref: HRG/M0A1/222)**

**Respondents** : **The tenants and leaseholders of the  
8,548 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**

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

**Date of decision** : **16 August 2022**

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**DECISION**

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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 for the supply of electricity and gas.

## **Covid-19 pandemic: description of hearing**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in support of the application.

### **The Application**

1. The Tribunal has received an application from Moat Homes Limited and Moat Housing Group, (“the Applicant”), dated 12 May 2022, seeking dispensation from of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”). The 8,548 residents who are Respondents to this application, have a gas or electricity supply for communal heating and/or communal lighting. The Applicant has provided a witness statement from Robert Lewins, a Public Procurement Officer, in support of the application.
2. The Applicant proposes to enter into a new Qualifying Long Term Agreement in respect of communal gas and electricity supply. The contract will not extend to any individual energy supply. The Applicant intends to procure the new contract making use of a framework established by the public sector central purchasing authority known as LASER. The benefit of using LASER is said to be that it allows the landlord to work collectively with others to buy energy, and to secure lower prices than the landlord could secure on its own.
3. The new contract will run from 1 October 2022, after the current contract has expired on 31 September 2022. The Applicant seeks dispensation from all the consultation requirements under section 20 of the Act 1985 on the basis that it will be able to take advantage of more competitive energy prices, if it entered into these agreements and, because of the volatile nature of energy procurement, it would not be able to obtain significant cost savings for the benefit of the leaseholders, if it were required to carry out the section 20 consultation process.
4. Mr Lewins describes how the nature of these agreements mean that it is not reasonably practicable for the Applicant to consult/give the required information to leaseholders at the notice of proposal stage of the consultation process and to have regard to the leaseholder’s observations because the Applicants have very little time to accept prices offered by its Energy Broker, usually a couple of hours.
5. In May, the Applicant notified the Respondents that they would be making this application. The Applicant has provided a sample copy of this letter. The letter advises the residents of the proposed dispensation application, the reasons behind it and the effect on the consultation

process. The Respondents were invited to comment on the proposed contract. Mr Lewins states that the Applicant have received a number of responses from the residents and they are continuing their ongoing effort to communicate and engage with the residents in order to alleviate any concerns that they may have. They will continue to do so.

6. On 5 July 2022, 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.
7. By 15 July 2022, 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 29 July 2022;
  - (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 29 July 2022.
8. On 9 August, the Applicant confirmed to the Tribunal that it has complied with this Direction and provided a template of the letter that it had posted a letter to all the affected residents on or about 12 July.
9. By 29 July, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and email it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the applicant a statement in response to the application.
10. Five leaseholders have completed forms opposing the application. Only one has specified her grounds for doing so. She states that she has been a leaseholder for twenty years. She points out that the Applicant is a charitable registered provider of affordable housing which had been run fairly and efficiently. She suggests that this is no longer the case. She questions whether it is necessary for communal lighting to be on 24

hours a day. Another leasehold objects because she does not know what the financial impact will be on her.

11. Pursuant to the Directions, the Applicant has filed a Bundle of Documents. It has also posted this on its website.

12. 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.”

13. **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 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.

14. 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 a single long-term agreement 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.

15. 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 30-day consultation period.

16. Energy prices are increasing significantly. The new contract is likely to be at considerable higher prices than the previous contract. The Applicant asserts that it will be able to keep any increase to a minimum by procuring a new contract through the LASER central purchasing authority.

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 also agreed to arrange the following:
- (a) The brokerage company will advertise the opportunity on their framework;
  - (b) Once the contract has been formally awarded, the Applicant will publish the outcome on Contracts Finder; and
  - (c) The Applicant will write to their residents again to inform them of the outcome of this application.

**Judge Robert Latham**  
**16 August 2022**

### **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).