



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

Case reference	:	LON/00BE/LDC/2023/0001
Properties	:	Various leasehold properties owned by the Guinness Partnership Ltd and others as listed in the application to the Tribunal
Applicants/ Landlords	:	(1) The Guinness Partnership Limited (2) Guinness Housing Association Limited (3) Guinness Care & Support Limited
Representative	:	Anthony Collins, Solicitors
Respondents/ Tenants	:	Various leaseholders and tenants mentioned or referred to in the application to the Tribunal
Type of application	:	To dispense with the requirement to consult leaseholders about a long-term agreement for the supply of energy to various properties
Tribunal Member	:	Mr Charles Norman FRICS Valuer Chairman
Date of Decision	:	25 June 2023

DECISION

Decision

1. Dispensation in respect of entering into qualifying long-term agreements with energy suppliers for the bulk purchase of energy to be supplied between 1 April 2024 and 31 March 2027 is **GRANTED UNCONDITIONALLY**.

Reasons

Background

2. On 3 January 2023, the Applicants/Landlords applied for dispensation from the statutory consultation requirements in respect the bulk purchase of gas and electricity which the Applicants intend to enter into, on the recommendation of their energy broker.
3. On 17 March 2023, the Tribunal set the case down for determination by written representations unless any party objected, which none did. The Applicants/Landlords were directed to notify the Respondents/Tenants of the application. The Respondents/Tenants were invited to serve objections if they so wished, by 29 April 2023, using a proforma form appended to the directions. On 6 April 2023, the Applicants/Landlords' solicitors confirmed that their clients had written to each of the tenants.

The Applicants' /Landlords' Case

4. Dispensation in respect of the bulk purchase of energy was previously granted on 19 August 2019 (LON/00AG/LDC/2019/0101). Those arrangements are intended to be co-terminus with the new arrangements, if dispensation is granted. The Applicants/Landlords recognise the difficulties their residents face in this challenging financial climate and want to maximise opportunities for passing reduced energy costs onto them as soon as they can. Energy as a commodity is volatile with energy prices changing 3-30% within the day and 100% over a year. Current wholesale energy prices for the period from 2024-2027 that are purchased more than 12 months in advance of usage are substantially lower than near markets. There are also forecasted peaks and troughs in the market, e.g., it is forecasted that there will be a drop in prices for the period 2024-2027 in January 2023. The Applicants/Landlords want to secure this benefit and provide medium-term protection for residents by being ready to enter into the first qualifying long-term agreements (QLTAs) any time from January 2023 onwards.
5. The Applicants/Landlords stated: *"The Applicants seek dispensation from all of the consultation requirements of section 20 because they would be able to swiftly enter multiple, longer-term gas and electricity supply contracts, taking advantage of more competitive energy prices. The Applicants would not be able to secure those significant costs savings for the benefit of their residents if they*

carried out a meaningful section 20 consultation, since energy is a commodity and trades on the energy markets. With prices changing minute by minute, competitive quotations for energy are only held for a matter of hours rather than the full 60 days (two 30-day periods) needed to consult with tenants in accordance with section 20. The energy market is currently very volatile, largely because of the Russia/Ukraine war and the effect that has had on supply to Europe. Actively monitoring the markets and purchasing energy in line with a wholesale purchasing strategy is likely to keep prices that will be passed on to residents to a minimum. However, this relies on a strategic view of the market and having expert guidance to purchase energy as the market presents opportunity in line with the Applicants' objectives: to keep a low and stable cost base and hence service charge for residents. In addition, the Applicants would be unable to provide estimated costs to residents which would be required if they were to comply fully with the Service Charges (Consultation Requirements) (England) Regulations 2003. The energy would be purchased as and when a competitive price was identified by the Applicants' broker, Inenco Group Limited, on the wholesale energy market and so they would not be able to advise residents of the cost in advance of contract placement. The Applicants would be provided by Inenco Group Limited with a bespoke energy procurement service to enable them to manage energy costs by seeking out the most competitive prices. Inenco Group Limited acts in this capacity for a number of other private registered providers. The energy market is very volatile, and the residents would benefit from any reduction to forecast increases for the duration of the contract. The period of the agreements would be 1st April 2024 to 31st March 2027."

6. A witness statement was provided by Mr Kevin Dunleavy, Head of Leasehold Services at the Applicants/Landlords. He stated that the application concerned 29,944 tenants and leaseholders. In all cases the service charge was variable, and the agreements gave the Applicants/Landlords the right to recover the service charge.
7. Mr Daniel Rapley, Senior Procurement Specialist at Inenco Group Limited, also gave a witness statement. Mr. Rapley stated that Inenco procures and manages energy supplies and has acted in the sector for 60 years. On 11 March 2020, the Applicants/Landlords and Inenco entered a master agreement to procure bulk energy. Inenco's role is to procure OJEU compliant energy supply contracts to secure competitive pricing. Mr. Rapley stated that he was familiar with the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 (the "Regulations"). He supported the basis of the application. If dispensation was granted, Inenco could act as appropriate to obtain the best pricing mechanism in respect of the period 1st April 2024 to 31st March 2027.

The Tenants/Respondents' case

8. A Mr Desmond Green sent an email on 6 April 2023 headed "LON/00BE/LDC/2023/0001 Formal Complaint - Not Part of the Communal Energy Supply". He made an unrelated complaint about service charges. There were no other responses.

The Law

9. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

10. The Tribunal finds that the Applicants/Landlords are seeking to act in the best interests of the Respondents/Tenants by seeking a mechanism to reduce energy costs. The Tribunal finds no merit in Mr Green's response to this application, which appears to reference other matters. It notes that no other Respondents/Tenants have objected to the application. The Tribunal has identified no prejudice likely to be suffered by the Respondents/Tenants. Therefore, the Tribunal is satisfied that it is reasonable to dispense with the requirements dispensation under section 20ZA. Accordingly, dispensation is granted unconditionally in respect of the consultation requirements to enter relevant qualifying long-term agreements for the bulk purchase of energy in respect of the period 1 April 2024 and 31 March 2027.
11. **However, this decision has no bearing on the question of the reasonableness of costs to be incurred or their payability. The Tribunal makes no findings in relation to those matters.**

Charles Norman FRICS
Valuer Chairman

25 June 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1) 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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.