



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CAM/22UF/LDC/2024/0008
Properties	:	All properties in respect of which costs may be payable under the relevant agreement for the Landlords' Electricity Supply as listed in the Schedule to the Application
Applicants	:	1. Chelmer Housing Partnership Limited 2. Legal & General Affordable Houses Limited 3.M&G Shared Ownership Limited
Representative	:	Chelmer Housing Partnership Limited
Respondents	:	All Long Leaseholders of dwellings at the Properties who may be liable to pay a service charge towards the costs incurred under the relevant agreement
Type of Application	:	To dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA
Tribunal	:	Judge JR Morris
Date of Application	:	6 th February 2024
Date of Directions	:	18 th March 2024
Date of Decision	:	20 th May 2024

DECISION

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Decision

1. The Tribunal determines that it is reasonable to dispense with compliance with Regulations 6 and 7 of Schedule 1 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
2. The Applicant Landlords shall place a copy of the Tribunal's decision on dispensation together with the relevant appeal rights attached on their website within seven days of receipt and shall maintain it there for at least three months, with a sufficient prominent link to them on their home page

Reasons

The Application

3. An Application for dispensation from the section 20 consultation requirements in respect of a qualifying long-term agreement for supply of electricity to sites where the First Applicant is the Landlord and sites where the First Applicant acts as Managing Agent for the Second and Third Applicant Landlords was made on 6th February 2024.
4. The Properties were described in the Application as being, the residential buildings at sites listed in the schedule to the Application where the Applicants are responsible for the communal electricity supply to which Leaseholders contribute and include:
 - a) multiple flats and/or maisonettes which benefit from communal electricity supply for the provision of services to the internal communal areas and/or exterior of the block such as: communal lighting, controlled door entry systems, fire alarms and fighting equipment and lifts where applicable; and
 - b) the provision of street lighting or lighting in parking areas.
5. The Application stated that a Notice of Intention had been posted out to all Leaseholders on 30th October 2023 pursuant to section 20 of the Landlord and Tenant Act 1985 consultation procedure, the consultation period of the Notice ending on 30th November 2023. The Notice stated that it was intended to enter a long-term agreement for the landlord's electricity supply to residential blocks. A copy of the covering letter sent with the Notice was provided which stated in summary that:

It was intended to enter a new agreement for the electricity supply to communal areas for which the Applicants were responsible and to which the Leaseholders contributed through their service charges.

Regulations require that a Notice of Intention is served on leaseholders if the landlord enters a long-term agreement under which the leaseholder is required to pay more than £100 in any one accounting period (normally a year).

A contract for more than a year may be entered into if it offers the best value.

Unfortunately, it will not be possible to provide details of quotes to Leaseholders as offers from suppliers will not give long enough for notification to be given for a full consultation. If a contract for more than twelve months is entered then an application will be made to the First-tier Tribunal for dispensation from the consultation requirements and Leaseholders will be informed if this is the case.

6. The Application went on to state that offers were received with only a short time in which to accept. Therefore, it was not possible to comply with the section 20 consultation requirements to obtain the best value. It was not possible to provide details of the offers with a thirty-day period for comments to be made before entering the agreement.
7. A contract for a fixed term of twenty-four months was chosen because:
 - a) Of the three offers the two that provided the lowest costs were for this time;
 - b) Two years gives more certainty compared with a twelve-month contract.
8. On 2nd February 2024 the Applicants posted out to all Leaseholders a Notice of Proposal and Reasons to enter a long-term agreement. The Notice set out the three proposals that had been received. No contractors were nominated by residents to be approached and the contractors had no connection with the Applicants. These were:

Contractor	Length of Contract	Estimated Total Annual Contract Value
Souhern	12 months	£418,809.46
	24 months	£419,672.13
	36 months	£432,405.17
Ecotricity	12months	£386,113.76
	24 months	£381,451.72
EDF	12 months	£381,737.56
	24 months	£378,196.48

Copies of the Proposals were made available to Leaseholders.

The offer that was accepted was with Ecotricity for 24 months. The reasons given were that:

- The 24 month contract offers a lower price and gives more certainty over costs for the future compared with the 12 month offer.
- Ecotricity produce a lower environmental impact in comparison with EDF as all the electricity was sourced from solar or wind whereas EDF included electricity from burning fossil fuels.
- Ecotricity estimated costs were only 0.86% higher than the lowest overall offer.

The contract allows for the unit price to vary dependent on total usage and the time at which the energy is consumed.

Observations were invited from Leaseholders by 8th March 2024.

9. A copy of the covering letter to the Notice of Proposal and Reasons was provided stating in summary that:
A new contract for communal electricity supplies had been entered for a fixed term of two years which it was estimated should achieve an annual saving of 36% in comparison with the existing contract.
10. Directions were issued on 18th March 2024 which stated that the Application would be determined on or after 20th May 2020 based on written representations and without an inspection, unless either party made a request for an oral hearing by 22nd April 2024. No request was received.
11. The Directions required the Applicant to write to each of the Leaseholders by email, hand delivery or first-class post, informing them:
 - of the application;
 - that a copy of the Application and all the supporting documents with any personal details deleted or redacted and a copy of the directions are available on line advising them of the URL address and any details needed to view and download copies.
12. The Applicant confirmed by email that the above had been done and attached the letter dated 4th April 2024 that had been sent, together with a Summary of Comments and Responses to the consultation that had taken place. These comments, which were mainly questions, and the responses received were in essence as follows:
 1. Comment: What is the electricity charge for?
Response: This was explained to the Leaseholder.
 2. Comment: Who is the current supplier?
Response: EDF on a one-year contract.
 3. Comment: Am I being consulted because my communal electricity charge is expected to be more than £100 per year and what have been the previous charges?
Response: The particular leaseholder's charge was not expected to be more than £100 but the consultation was carried out because some Leaseholders' contributions will be more than £100.00 per year and the contract is for more than one year. Information was provided to the leaseholder on their previous charges for communal electricity.
 4. Comment: I live in a house so what is the electricity charge for?
Response: Some houses contribute towards communal electricity where the freeholder has responsibility for street lighting or other communal facilities. It was confirmed what the electricity charge was for in connection with the property.

5. Comment: Some of the information given is difficult to understand.
Response: Offer made to explain and queries the leaseholder may have.
 6. Comment Are the costs in the table included in the Notice of Proposal and Estimate correct as they are very high for my block and I would not have accepted them if I had known beforehand?
Response: The figures in the table are for the annual expenditure for the entire contract and include 476 sites including your block. We would normally notify Leaseholders of the estimates which were received for qualifying long-term agreements however this was not possible for the electricity contract as offers could not be guaranteed for the time it would take us to carry out the consultation. Under the new contract it is estimated we will achieve a financial saving of 37% in comparison to our existing one.
 7. Comment: Why have you not gone with the cheapest supplier for this contract?
Response: As the estimated price difference between the two cheapest contractors was so small, less than 1% of the annual contract price, the decision was made to go with the supplier who produced all their energy from green sources and so are more environmentally friendly.
13. A witness statement was provided from Alex Manning, Leasehold Advisor to Chelmer Housing Partnership. Mr Manning stated that although the previous contract which ended on 28th February 2024 was for twelve months, it was likely the new contract would be for longer. In addition, the service charge account for the actual costs for the financial year 2022/23 showed that 23 of the Respondents had contributed more than £100.00 in the year towards the Landlord's electricity supply through their service charges. Therefore, the new contract was likely to be a Qualifying Long-Term Agreement within section 20 of the Landlord and Tenant Act 1985 and The Service Chargers (Consultation Requirements) (England) Regulations 2003.
 14. Dispensation for the latter part of the procedure would be necessary because the volatility in the electricity market meant prices and offers could change during the course of a day. This meant that it would not be possible to comply with the requirements to give details of the offers received and the opportunity to make comments before entering the contract.
 15. He said following the period in the Notice of Intention ending on 30th November 2023 the Monarch Partnership Ltd were instructed to obtain quotes. They approached suppliers on 7th December 2023 and obtain quotations from three different companies which varied depending on the length of the contract. Monarch provided annual estimates for each quote based on the unit rates and standing charges of the suppliers and the annual consumption calculated from previous bills for the existing contract. A copy of Monarch's report was provided.

16. A contract was entered into with Ecotricity on 7th December 2023 for 24 months from 1st March 2024. The Ecotricity 24-month contract was the second lowest annual cost and was from green sources reducing the environmental impact of the supply and the price difference compared with the lowest annual cost was less than 1%. The 24-month contract was also selected because it protects the Respondents from possible increases during the contract period. Increases in the market cost for electricity have been significant during the past two years. The contract does allow the unit price for electricity and the standing charge to vary depending on factors such as usage and the meter type of each block.
17. Mr Manning said that the Applicants had sought to keep the Respondents aware of the intention of entering a new contract in serving a Notice of Intention on 30th October and giving an opportunity to make observations and by informing the Respondents of the awarding of the contract by serving the Notice of Proposal and Reasons on 2nd February 2024. These actions were done to avoid the Respondents suffering from any prejudice to their rights and the intended aims of the consultation requirements. He added that no further representations had been received following the notification of the application for dispensation sent on 4th April 2024.

The Law

18. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to long term qualifying contracts (contracts for more than 12 months) if the relevant costs incurred exceed an amount which results in the relevant contribution of any tenant being more than £100.
19. The consultation provisions appropriate to the present case are set out in Schedule 1 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
20. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

Determination

21. In determining whether dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that "*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*".

22. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:
Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]
23. The Tribunal noted that the Respondent Leaseholders had been sent:
- On 30th October 2023 a Notice of Intention which had given an opportunity to make observations and nominate contractors within a period of 30 days as required by the regulations, together with a warning that it would be necessary to apply for dispensation for part of the consultation requirements and the reason for such application;
 - On 2nd February 2024 a Notice of Proposal and Reasons for entering a long-term agreement, which set out the three proposals that had been received and the reasons for accepting the contract with observations being were invited by 8th March 2024.
 - On 4th April 2024 a copy of the Application under 20ZA and Directions, together supporting documents.
 - The Tribunal has received no representations in response to the Application.
24. The Tribunal finds that the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 1 of the Service Charges (Consultation requirements) (England) Regulations 2003 have been complied with and may be dispensed with to the following extent:
25. The Tribunal finds that the Applicants have complied with the Schedule 1 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) as follows:
Regulation 1 service of the Notice of Intention
Regulation 2 Inspection of Description of Relevant Matters
Regulation 3 Duty to have regard to observations in relation to proposed agreement
Regulation 4 Estimates
Regulation 5 Preparation of landlord's proposals
Regulation 8 Duty on entering into agreement
26. The Applicants have not complied with Regulations 6 Notification of landlord's proposals and Regulation 7 Duty to have regard to observations in relation to proposal. The Tribunal accepts that the volatility of the market place for electricity supply is such that it was not possible to share the estimates with the Respondents, give them an opportunity to make observations and obtain the best value for the Respondents. The Tribunal accepts that to comply with this part of the procedure could well have caused prejudice to the Respondents.

27. The Tribunal therefore determines that it is reasonable to dispense with compliance with Regulations 6 and 7 of Schedule 1 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
28. The Leaseholder Respondents should note that this is not an application to determine the reasonableness of the contract or its cost. An application can be made to this Tribunal under section 27A of the Act in relation to whether any service charges for any costs payable under the agreement are reasonable or payable.
29. The Applicant Landlords shall place a copy of the Tribunal's decision on dispensation together with the relevant appeal rights attached in their website within seven days of receipt and shall maintain it there for at least three months, with a sufficient prominent link to them on their home page.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to long term qualifying agreements if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £100.
2. The consultation provisions appropriate to the present case are set out in Schedule 1 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to enter a long-term qualifying agreement must be served on all the tenants. The Notice must state the reasons for entering the agreement and give an opportunity for tenants to view the relevant matter and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the "relevant period" and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the relevant matter. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the "relevant period" and defined in Regulation 2.) This is for tenants to check that the contract to be entered is permitted under the Lease, and are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
 - (1) 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 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—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
- (4) to (7)... not relevant to this application.