



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

Case reference : **BIR/00CS/LDC/2024/0008**

Properties : **Various Properties in the ownership of
Nehemiah United Churches Housing
Association as Landlord**

Applicant : **Nehemiah United Churches Housing
Association**

Representative : **Anthony Collins Solicitors LLP**

Respondent : **The 522 Lessees of Various Properties
in the ownership of Nehemiah United
Churches Housing Association as
Landlord**

Representative : **None**

Type of application : **An application under section 20ZA of
the Landlord and Tenant Act 1985 for
the dispensation of the consultation
requirements in respect of qualifying
works**

Tribunal members : **Judge C Goodall
Mr V Ward, FRICS, Regional Surveyor**

Date of decision : **06 September 2024**

DECISION

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Background

1. The Applicant has applied for a decision by this Tribunal that it may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of qualifying long term agreements which it has already entered into (“the Application”).
2. These were:
 - a. 2 year contracts dated 12 May 2022 for the supply of electricity in respect of firstly 44 Meter Point Administration Numbers (MPAN) and secondly 4 MPANs. The contracting supplier was EDF Energy Customers Ltd; and
 - b. a 2 year contract dated 27 October 2022 for the supply of gas to meet the Applicant’s gas needs with SEFE Energy Ltd

(all three contracts defined in the Decision as “the Contracts”).
3. Under the provisions identified in paragraph 1 above, unless dispensation is granted, the Applicant will have a duty to consult with five hundred and twenty-two tenants of the Applicant’s properties concerning the entering into of the Contracts.
4. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more than £100.00 from each Respondent. Therefore, it has made the Application, which was dated 28 March 2024.
5. Directions were issued on 15 April 2024 requiring the Applicant to inform all the Respondents of the Application and to provide all Respondents with details about how they could access full copies of the application and all supporting documents via the Applicant’s website and explaining why it had decided to seek dispensation rather than carry out a full consultation.
6. The Tribunal notes that a letter was sent to all tenants dated 15 May 2024 informing them of the application and explaining the reasons for it, and that documents have been made available to tenants via the Applicant’s website.
7. The Respondents were all given an opportunity to respond to the Application and make their views known as to whether the Tribunal should grant it.
8. The Application has been referred to the Tribunal for determination. This is the decision on the Application.

Law

9. The Landlord and Tenant Act 1985 (as amended) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
10. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £100 for payments due under a long term service agreement unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
11. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)).
12. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
13. The Tribunal’s role in an application under section 20ZA is therefore not to decide whether it would be reasonable to enter into the Contracts, but to decide whether it would be reasonable to dispense with the consultation requirements.
14. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; if so, it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.
15. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

The Application

16. The rationale for the application is set out below:

“The Applicant seeks dispensation from all of the consultation requirements in section 20 because the Respondents have not suffered a prejudice as a result of the Applicant's failure to follow the consultation requirements.

The Applicant is provided by their broker, The Monarch Partnership Ltd, with a bespoke energy procurement service to enable them to manage energy costs by seeking out the most competitive prices. Several brokers act in this capacity for a number of private registered providers. Tenants have benefitted from the lower prices that were available when the Applicant acted to lock in 2 year deals, rather than 1 year deals, in May 2022 in respect of the 2 electricity contracts, and in October 2022 in respect of the gas contract.

The Applicant would not have been able to secure those costs savings for the benefit of their tenants if it had carried out a 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 has been extremely volatile, largely because of the ongoing Russia/Ukraine war and the effect that has had on supply to Europe. Actively monitoring the markets and purchasing energy in line with the Applicant's objective to keep a low and stable cost base and hence service charge for residents, relies on a strategic view of the market and having expert guidance to purchase energy as the market presents opportunity.

In addition, the Applicant was unable to provide estimated costs to tenants which would be required if it was to comply fully with the Service Charges (Consultation Requirements) (England) Regulations 2003. Since the electricity and gas was purchased as and when a competitive price was identified by their broker on the wholesale energy market, the Applicant was not able to advise tenants of the cost in advance of contract placement.

Even if practical (which it was not for those reasons), had a full consultation gone ahead, it would have been impossible for the

Respondents to show that a 1 year deal would have benefitted them more than a 2 year deal at the time of contract placement. This is because prices that may become available at a specified point in the future were unknown; hence the Applicant acted on the best information that was available at the time, on the advice of its broker.”

17. No Respondent has objected to the Application.

Discussion and decision

18. The Tribunal has carefully considered the documents provided with the Application and accepts the rationale for making it. The grant of dispensation is likely to be at a lower cost and obtained more speedily than carrying out the processes of full compliance with section 20 of the Act, which appears to be impractical in any event. No Respondent appears to the Tribunal to have suffered or be likely to suffer any prejudice as a result of the grant of the Application. The Respondents have been fully informed of the Application and none have objected.
19. We **determine** that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the entering into of the Contracts.
20. This decision does not operate as a determination that any costs charged to any Respondent for utility costs are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondent’s remain at liberty to challenge such costs under section 27A of the Act in the future should they wish (dependent upon the precise terms of the tenancy agreements).

Appeal

21. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)