



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

Case reference : **MAN/OOCK/LDC/2024/0019**

Property : **Various as listed in application.**

Applicant : **Castles & Coasts Housing Association Limited**
Representative : **Devonshires Solicitors**

Respondents : **1220 Residential Long Leaseholders and
Tenants**
Representative :

Type of application : **Dispensation with Consultation
Requirements under section 20ZA Landlord
and Tenant Act 1985.**

Tribunal Members : **Judge J White
Ms H Clayton**

Venue : **Paper (P)
Northern Residential Property First-tier
Tribunal, 1 floor, Piccadilly Exchange, 2
Piccadilly Plaza, Manchester, M1 4AH**

Date of decision : **6 August 2024**

DECISION

The Decision

- (i) 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 Long-Term Agreement to procure gas and electricity from the wholesale market from 1 October 2024 to 30 September 2028

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Application

1. On 22 February 2024, the Applicant applied for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant is Castles & Coasts Housing Association Limited a Registered Provider of Social Housing and is registered under the Co-Operative and Community Benefit Societies Act 2014. Castles & Coasts Housing Association Limited provide a range of tenancies and shared ownership homes in Cumbria, Lancashire, Durham, Northumberland and Tyne and Wear Counties.
3. The Respondents are the tenants and leaseholders of the 1220 properties charged for gas and electricity within Cumbria, Lancashire, Durham, Northumberland and Tyne and Wear Counties.
4. The application relates to bulk purchase of gas and electricity which the Applicants intend to enter into, on the recommendation of their energy broker, Inenco for the to procure gas and electricity from the wholesale market from 1 October 2024 to 30 September 2028
5. On 24 May 2024, the Tribunal issued Directions. By 7 June 2024, in accordance with those directions the Applicant submitted a bundle of documents to the Tribunal and each leaseholder.
6. The Directions also stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 6 August 2024 without the parties to determine the application on the papers. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

The Applicants case

7. A witness statement was provided by Liz Preston, Income Manager of the Applicants/Landlords and Daniel Rapley, Senior Procurement Specialist at Inenco Group Limited. Their application is as follows:
8. The Applicants entered into an agreement with Inenco on 1 June 2023 for Inenco to procure gas and electricity from the wholesale market from 1 November 2023 to 30 September 2024 (“Master Agreement”). Inenco provides procurement, brokerage, and supply of metered and unmetered electricity, with meter operations and associated services. Inenco says it is one of the largest energy consultancies in the UK and has over 60 years’ experience in the energy sector.
9. The Applicant’s current supplier for electricity and gas is EDF (sourced through Inenco) and the Applicant currently has an 11-month fixed-price contract from 1 November 2023 to 30 September 2024.
10. Inenco's role under the Master Agreement is to secure OJEU/Public Contract Regulation compliant energy supply contracts and procure energy from wholesale markets in line with the purchasing strategy instructed by the Applicant.
11. The Applicant has instructed Inenco to enter into a new four-year contract using the wholesale purchasing strategy for the supply of electricity and gas for the period 1st October 2024 to 30th September 2028, in order to take advantage of optimum market conditions as they present themselves. This would be desirable because: -
 - (i) The Applicant must fulfil their obligation of providing energy services to their leaseholders and tenants;
 - (ii) The Applicant believes that by partnering with Inenco, it can take advantage of their spend in the market and experience of forecasting in a difficult energy sector. Inenco has also proposed a variety of strategies for procuring energy on the wholesale market including fixed price; capped or active trading which is also known as trend trading in which an aggressive buy and sell mechanism is used.
 - (iii) The Applicant and Inenco intend to utilise a mix of the above strategies for procuring energy. Whichever strategy is used, purchasing from the wholesale market secures competitive pricing as it negates the current need to place all volume on a single day of the year. This may in turn also help to bring down the service chargeable element that our leaseholders and tenants pay.
 - (iv) This contract ensures value for money. It provides access to an extensive group portfolio of customers which means greater buying power and ultimately lower unit costs.
 - (v) It ensures effective management of energy contracts to ensure accuracy of service charge costs.

12. In this instance the Applicant is unable to comply with the requirements of Section 20 of the Landlord & Tenant Act 1985 for the new four-year proposed contract due to the nature of energy brokerage.
13. The Applicant must comply with Public Procurement Regulations. Under these regulations, a period of ten days must be allowed between the notification of bidders of the decision to award the contract and signing the contract with the successful bidder. The energy market does not operate in this way as bids are requested and contractors are obliged to sign within a 24-hour period. The only way to reconcile these two constraining obligations is to have a section 20Z dispensation granted allowing the applicants to take advantage of potentially advantageous rates in a timely manner. In order to achieve these benefits, the applicants have appointed experienced brokers who act as a third-party intermediary (TPI) which in this case is Inenco. the bene
14. The TPI will need to approach the marketplace on a particular date to obtain bids from energy companies to supply gas and/or electricity. The purpose of fixing a unit price for the supplier of gas and electricity is to benefit the Applicant's leaseholders and residents who will be able to take advantage of the Applicant's purchasing power and economies of scale. By using a TPI to buy gas and electricity through the wholesale energy market, the Applicant is complying with best practice and best value for its residents.
15. The nature of the Long-Term Agreements mean that it is not reasonably practicable for the Applicant to give the required information to residents at the notice of proposal stage of the consultation process and to have regard to the resident's observations. This is because there has to be acceptance of prices offered in a small window of time.
16. The Applicant intends on communicating with the Respondents on this issue as far as possible. The Applicant has written letters to all tenants advising of intentions to apply for Section 20 consultation dispensation. These letters were sent to tenants on 11 January 2024. The Applicant has updated the relevant section of their website to inform tenants of the proposed Section 20 dispensation.
17. Inenco's Daniel Ripley says that "Energy is a commodity and trades on the energy market. Currently, energy prices are typically changing 3-30% within the day and more than 100% over a year. With prices volatile, changing minute by minute, competitive quotations for energy are only held for a matter of hours. Barring a dramatic turnaround in Russia/Ukraine/Europe relations, supply worries are likely to continue and potentially get worse over the next 12 months.
18. The backdrop is that Europe was able to fill their reserves with Russian gas over the summer of 2022, before Russia cut all pipelines, and Europe experienced an abnormally mild winter in 2022/23, so energy prices actually came down over that period. Prices are currently forecast to become higher

going into autumn/winter 2024, because of the projected depletion of the current European storage, and especially if temperatures during the winter of 2024/25 are average or colder than average.

19. Whilst prices are currently lower than in 2022, there is backwardation in the market meaning that energy is cheaper the further out we currently place. This is a common occurrence in the energy market. Current wholesale energy prices for the period from 2024 to 2028 are cheaper year on year. That is, prices for 2025 are lower than for 2024, prices for 2026 are lower than for 2025, and so on.
20. Adopting a flexible 4-year wholesale purchasing strategy would enable Inenco, on behalf of the Applicants, to react to any given scenario within the day. The purpose of such a strategy would be to try to protect the Applicants' residents in relation to energy prices during a further 4-year period.
21. Energy can be procured on the wholesale market by using one or more types of strategies: fixed price; capped; or active trading in which an aggressive buy and sell mechanism is used (trend strategy). Whichever strategy is used, purchasing from the wholesale market generally secures competitive pricing as it negates the current need to place all volume on a single day of the year. It is possible that a capped strategy placing a 5% virtual cap on prices for each of the 4 years looking forward may be used. Under this strategy, prices would track the market downwards but never move upwards, and should the market take an upturn such that prices increased, Inenco would then trade as soon as possible.
22. An alternative strategy that may be used is the trend strategy. This would take a much more aggressive buy and sell strategy through a turbulent market, trying to take advantage of peaks and troughs by buying energy while prices were on the way up, and selling at the peaks to repurchase on the way down, to produce a benefit for residents in terms of the overall cost of the energy procured. The strategy chosen would be dependent on the market at the time of the Applicants achieving a dispensation under section 20ZA of the Landlord and Tenant Act 1985. The Applicants' customers would benefit from any reduced cost for the period of the contract.
23. Wholesale energy prices in the market have recently dropped off significantly, prices in August 2022 were much higher than current pricing. In addition, due to the current backwardation in the market, current wholesale energy prices for the period from 2024 to 2028 are lower than near markets. It is therefore likely to be advantageous for residents for the Applicants to enter into a new 4-year wholesale purchasing strategy in early 2024, for energy required during the period from 1 October 2024 to 30 September 2028".

The Response

24. There were 11 responses out of 1220 tenants. None specifically addressed the issues of the Long-Term Agreement, though one said they did not agree due to

“cronyism.” One suggested that the communal lighting in Castlehead Close Keswick be switched to low level lighting combined with movement-sensitive brighter lighting during the hours of darkness. Another suggested solar lighting and survey properties to establish energy saving measures, such as insulation. Some queried how costs were measured in general, for example lack of metres and payment for street lighting. Others misunderstood the application, wanted better sharing of information, asked for further information, information in a more accessible format or face to face meetings. One said that delay meant increased costs of a bridging contract.

The Law

25. S 20ZA of the Act states: *(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.*
26. On an application for dispensation the focus of the Tribunal must be on the relevant prejudice if any suffered by the lessees as a direct result of the lessor’s failure to consult. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson et al [2013] UKSC 14. It set out a number of factors for the Tribunal to consider. *“As the Supreme Court made clear in Daejan, the consultation requirements are not an end in themselves; they can be dispensed with if there is no relevant prejudice to the leaseholders, meaning prejudice that arose because of the lack of consultation rather than any reason.”* Holding & Management (Solitaire) Limited v Leaseholders of Sovereign View [2023] UKUT 174 (LC) [21].

The Determination

27. The Consultation requirements provide important safeguards for leaseholders and should not be dispensed with unless the Tribunal is satisfied that it is reasonable to dispense with the requirements as set out in Daejan.
28. A very small percentage of leaseholders have responded, as set out above. A few have raised important issues relating to energy saving measures and the need for better information sharing and consultation in general. One has mentioned delay. None have specifically addressed how they would be prejudiced *as a result* of the lack of consultation.
29. On the other hand, the Applicant has set out a cogent and credible argument stating why dispensation should be dispensed with and how this is in the best interests of tenants. This is supported by Inenco’s statement. Though their statement may be partial, it sets out how this method of procurement is beneficial to tenants in a volatile market. Previous first tier tribunals have accepted this argument. The Tribunal agrees that there is no prejudice

because of the lack of consultation. This type of procurement method is industry standard in large scale energy contracts, as a broker is best placed to achieve the most competitive rates. That with the fee, 65% of savings will be passed on to the Tenants. The market is volatile and by carrying out the steps required in consultation, the Landlord would lose the opportunity to pin down a competitive price. Though it is not clear what information had been provided and in what format, it is an approach that is clearly in the best interests of the tenants. The other issues identified are not relevant to the issue of dispensation.

30. For the reasons set out above the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the Application.
31. The Applicant is to make the Tribunal's decision available to each lessee to whom directions were sent.
32. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs relating to communal fuel costs are reasonable or payable.**

Judge J White
6 August 2024

RIGHTS OF APPEAL

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.