



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

Case reference : **LON/00BJ/LDC/2024/0174**

Applicant : **The Mayor and Burgesses of the London Borough of Wandsworth (the Council)**

Respondent : **The tenants of the Applicant affected by the electricity and gas contract with the Council**

Property : **Various properties throughout the London Borough of Wandsworth**

Date of decision : **24 September 2024a**

Tribunal Member : **Judge Dutton
Ms M Krisko FRICS
Mr. C Piarroux**

**DECISION ON AN APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985**

“We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 6 (Objections) of our Decision dated 24 September 2024. Our amendments are made in bold. We have corrected our original Decision because of two minor typographical errors and the incorrect spelling of an address as well as removing the full addresses of the persons objecting.”
Corrected 4 October 2024

Judge Dutton

DECISION

The Tribunal orders that there be dispensation from the consultation requirements under s20 Landlord and Tenant Act 1985 (the Act) for the reasons set out below

Background:

1. The application made on 14 June 2024 relates to the Applicant’s entering into Qualifying Long-Term Agreements (QLTA) for the supply of electricity and gas to its tenanted properties in Borough which use electricity for its common parts and in respect of communal heating and hot water. It does not relate to the

individual supply of gas and electricity to each property which is under the control of the leaseholder. The details of the properties and the respective leaseholders affected by this application have been supplied to the tribunal.

2. This application has been dealt with as a paper determination as provided for in the directions issued by the Tribunal dated 17 July 2024 as amended on 1 August 2024. At the time of the determination, we had before us a bundle consisting of some 611 pages, although it must be said there was a good deal of duplication. The bundle contained the application, the directions, a witness statement of Jamila Atta with a number of exhibits, correspondence with the tribunal and leaseholders as well as details of objections raised, enquiries submitted to the Council and copies of communications in support.
3. The application involves 13,968 leaseholders in respect of the supply of electricity to the common parts of their properties and 668 in respect of the supply of gas for communal heating and hot water, the payment for which is through the service charge regime applicable to the relevant property.
4. The Council is already part of what is termed a Framework Agreement with LASER (Local Authority South East Region), which is owned by Kent County Council who are the Central Purchasing Body selected by the Council for the period 2024 to 2028, The existing Framework Agreement expires on 30 September 2024 hence the need for this new arrangement to be in place by 1 October 2024, if only to avoid the need for an application for retrospective dispensation. Dispensation has already been given by this Tribunal on five occasions. The last being in July 2020.
5. Directions were issued in July 2024 and amended in August to provide for the matter to be determined before the end of September. The directions providing for the furtherance of the case have been adhered to by the Council and within the bundle there were communications from leaseholders objecting, supporting and raising queries. According to the Council there were some 223 responses of which 6 amounted to objections, the remainder seeking further information.
6. The Council relies on the statement of Jamila Atta the Energy and Sustainability Manager within the Property Services Team, part of the Council's Housing and Regeneration Department. This goes into detail concerning the history of the Framework Agreement and its benefits to the leaseholders. This statement has been supplied to each leaseholder either via the Council's web site or if requested in hard copy. An example of the letter sent is included in the bundle. The arrangements are set out and the reasons for following this course and the need for dispensation clearly stated. The statement confirms that the Council has been part of the Framework Agreement since 2009 and that it has been found to be effective in mitigating the cost of energy in a somewhat volatile market. Indeed, this arrangement, involving both gas and electricity has been the subject of review by this tribunal since 2012. The statement has included comparisons between the prices achieved and the market average, which show for the period October 2021 to September 2024, that save for the October 2023 to September 2024 for electricity, there have been marked savings using this arrangement. It is said that the Council total energy spend between 2020 and 2024 has been reduced by £5.3m per annum.

Objections

- Mr Llewellyn of William Harvey House provided a statement objecting. The tenor is that the Council has not produced evidence to support the continued use of the Agreement. It is said that the dispensation if granted could impact on “*the interests of leaseholders who would be obviated because the applicant has not properly set out its case*”. His statement refers to falling energy prices, which are intended to continue falling.
- Mr A Sababady of Anderson House says that he wants the Council to follow all consultation requirements but gives no specific reasons.
- Dan Francis on behalf of the PCC of Ascension Church opposes the application saying, “*We oppose the plans to dispense of the consultation aspect as we believe the procurement process is very important and will prevent potential deals being done which are not in the best interest of leaseholders.*”
- Adrian Puscasu of Morgan Court who states that he does not want a communal water heating system, which of course is not the intended purpose of the application before us.
- Jillian Ede in her email states she is uncomfortable with the proposals as it could lead to higher consumer prices and is at variance with the green credentials. She suggests solar panel should be considered
- Steven Fannon raised an objection aimed at the electricity costing, referring to the installation of energy saving lights bulbs which do not, he says, seemed to have save costs.
- Kris Budha Skipsea House refers to the ‘development’ that could destroy the tranquil nature of the estate. It is not wholly clear to what he is referring.
- Laeeq Ahmad complains that there is insufficient information to ensure best value and transparent and reasonable procurement.
- Robert Smael of ~~Shipley~~ **Shepley** Court complains that insufficient information has been provided and that given the Councils poor track record of Estate and Service management he did not think he was being given enough relevant information to make a decision on this application
- Surfraz Ahmad raises an objection, but this seems to be directed at service charges as a whole not this particular matter.
- Marioa Mouyis of Mullins House raises a general concern that appears to be that the application relates to her own electricity and gas supplies and raises an issue concerning a lift.

The Law

7. The only issue we are required to determine is whether or not is reasonable to dispense with the consultation requirements. A QLTA is an agreement entered

into for more than 12 months. Failure to consult will expose the Council to a limitation of the sum they can recover from the leaseholders of £100.

8. Dispensation can be sought, as here, under s20ZA of the Landlord and Tenant Act 1985. The Supreme Court case of *Daejan Investments Limited and Bensons and others [2013] UKSC 14* is the leading authority which requires the leaseholder to show that dispensation will cause them prejudice. If such prejudice can be shown the dispensation may be refused or granted with conditions.

FINDINGS

9. We are satisfied that for the Applicant to be able to enter into the QLTA for the procurement of electricity and gas supplies it would not have been possible to undertake the consultation requirements as provided for in the Service Charges (Consultation Requirements) (England) Regulations 2003, schedule 1. The statement by Jamila Atta and the terms of the application itself clearly support this.
10. We have considered the Supreme Court Case of *Daejan Investments Limited v Benson and other* referred to above and do not consider that there is any prejudice caused to the tenants, indeed, it seems to us that given the well documented evidence of volatility in the gas and electricity market that these arrangements should save the tenants money. Indeed, it is noted that Ofgem (the energy regulator) has announced the energy price cap will rise around 10% for a typical home from October 1 to December 31, due to the global cost of energy.
11. We therefore conclude that it is right to dispense with the consultation requirements.
12. As we have stated our only requirement is to consider whether or not it is reasonable to dispense with the statutory consultation requirements. Our decision does not affect any other rights that any tenant may have.
13. In accordance with the direction 8 of the Tribunal dated 17 July 2024 the Applicant will upload a copy of this decision to its website within 7 days of it being sent to the Applicant.

Tribunal Judge: Judge Dutton

Date: 24 September 2024 corrected 4 October 2024

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 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).