



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : **LON/00AN/LDC/2024/0502**

Property : **Various properties in Hammersmith and Fulham**

Applicant : **The London Borough of Hammersmith and Fulham**

Representative : **Mr John Sharland**

Respondents : **The 4,313 leaseholders listed in Appendix 1 to the Application**

Representative : **n/a**

Type of application : **For dispensation from the statutory consultation requirements under section 20ZA Landlord and Tenant Act 1985.**

Tribunal : **Judge N O'Brien**

Date of decision : **3 December 2024**

DECISION

Decision of the Tribunal

1. The Tribunal grants the application for retrospective dispensation from the statutory consultation requirements in respect of the contract for the supply of electricity to the communal areas of the blocks, estates and street properties, and the supply of gas to the boiler rooms serving the Applicant's estates, communal block boilers and communal supplies to smaller blocks from 1 December 2024 to 31 March 2030.
2. This dispensation is subject to the conditions set out in Appendix 1 to this decision.

The Application

3. The Applicant seeks dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (LTA 1985) from the consultation requirements in respect of a contract for the supply of electricity to the communal parts of its residential estates and blocks, and the supply of gas to communal boilers and communal gas supplies on various estates owned by the Applicant. The proposed contract is a Qualifying Long-Term Agreement (QLTA) to which section 20 of the LTA 1985 and the Service Charges (Consultation Requirements)(England) Regulations (the 2003 Regulations) apply. The contract is one to which the public notice requirements apply and consequently the consultation requirements are those set out in Schedule 2 to the 2003 Regulations.
4. The Applicant seeks dispensation in respect of its decision to award a 5.5-year contract for the supply of gas and electricity via LASER, a public sector buying organisation which is part of Kent County Council. The Applicant is one of a number of public sector authorities who participate in this framework. The Applicant considers that the framework is beneficial as it enables public sector authorities to work together and collectively buy energy on the wholesale market. The Applicant explains that prices and contract options on the wholesale market are usually available for a 24-48 hour period, far too short a time to allow for the 30-day consultation required by the 2003 Regulations. It considers that the agreement will permit it to avoid being locked into high energy prices while taking advantage of any falls in the market.
5. Pursuant to paragraph 1 of schedule 2 to the 2003 Regulations the Applicant sent a notice of intention to all affected leaseholders on 5 August 2024 and to 25 residents associations on 12 August 2024.
6. By directions dated 17 October 2024 the Tribunal directed that the Applicant should, by 25 October 2024, send to the leaseholders who contribute towards the cost of supply of communal energy and any recognised tenant's association, the application form and the directions. They were also ordered to upload a copy to the webpage set up by the Applicant to keep affected leaseholders informed of the progress of the application and confirm to the Tribunal that this had been done. The Applicant confirmed by letter emailed to the Tribunal on 24 October 2024 that those directions had been complied with. All leaseholders who had supplied an email address had been emailed and the Applicant sent hard copies of the documents to those leaseholders for whom they do not hold an email address. All 28 residents' associations were notified by email on 23 October 2024, and the documents were uploaded to the relevant webpage.
7. The directions provided that if any leaseholder or sublessee objected to the application, he or she should inform the Applicant and the Tribunal

by 8 November 2024 , with any reply to be filed and served by the same date.

8. The Tribunal received two reply forms from a Mr Karl Steidl and Ms Stefania Vati indicating that they objected to the application. The grounds for their objections are set out in emails included in the applicant's bundle. Mr Steidl was concerned about the cost of a lightbulb in the communal area of the building in which his property is situated. Ms Vati objected on the grounds that she had not experienced any issues with her power supply. Neither leaseholder asserted that would be prejudiced in any way by the application.
9. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing.

Legal Framework

10. Schedule 2 to the Service Charges (Consultation Requirements)(England) Regulations 2003 set out the consultation process which a landlord must follow in respect of works which will result in any leaseholder contributing more than £100 towards the cost of a QLTA where public notice is required. In summary they require the Landlord to follow a three-stage process before commencing entering the agreement. Firstly the Landlord must send each leaseholder a notice of intention to enter into the contract and give the leaseholders 30 days to respond. Then the Landlord must send out a detailed proposal in respect of the proposed agreement and permit a further 30-day period for observations and take those observations into account before entering any agreement.
11. Section 20ZA of the LTA 1985 provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with any or all 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”.

9. In *Dejan Investments Ltd v Benson and others [2013] UKSC 14* the Supreme Court held that in any application for dispensation under s20ZA of LTA 1985 the Tribunal should focus on the extent, if any , to which the leaseholders are or would be prejudiced by either paying for inappropriate works or paying more than would be reasonable as a result of the failure by the landlord to comply with the Regulations. The gravity of the landlord's failing or the reasonableness of its actions of the landlord are only relevant insofar as they are shown to have caused such prejudice. The evidential burden of identifying relevant prejudice

lies on the tenants but once they have raised a credible case of prejudice, the burden is then on the landlord/applicant to rebut it.

The Tribunal's decision

10. The Tribunal determines that it will grant the dispensations sought by the Applicant. The Applicant is granted dispensation from the following requirements of Schedule 2 to the Regulations;
 - (i) Paragraph 1(2) d;
 - (ii) Paragraph 4(2),
 - (iii) Paragraphs 4(4) to 4(7) and
 - (iv) Paragraphs 4(9) and 4(10)
 - (v) Paragraph 5(2)
 - (vi) Paragraph 7

11. The Tribunal accepts that it would not be practicable to comply with the Schedule 2 consultation requirements and participate in the LASER scheme. The Tribunal accepts that the purpose of the scheme is to permit the Applicant to benefit in falls in the cost of energy while avoiding the effect of spikes in the energy market. This will also benefit the affected leaseholders.

12. In its grounds for seeking dispensation the Applicant has suggested a number of measures which it could take to ensure that the leaseholders are fully informed in return for dispensation being granted. The Tribunal makes the grant of dispensation condition on those measures being implemented. They are set out in Appendix 1 to this determination.

13. This determination does not affect the rights of any leaseholder to challenge the reasonableness or payability of any service charge save insofar as the challenge relates to a failure to comply with the statutory consultation requirements in respect of this contract.

Name: Judge N O'Brien

Date: 3 December 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).

Appendix to the Decision

The following conditions to be applied pursuant to the dispensation:

- (1). The Council to publicise and maintain a dedicated webpage hosting information on the proposal, the application to the First-tier Tribunal for dispensation, a copy of the full Directions, and, subsequently, the Tribunal's Decision.
- (2) Within 21 days of entering into contract, the Council to publish on its website contract information about:
 - i. The name of the energy supplier;
 - ii. The date of the agreement;
 - iii. The contract duration;
 - iv. The date on which supply starts;
 - v. The date on which the contract period ends; and
 - vi. A summary of the observations received through the Notice of Intention and the Council's response to the same
- (3). The Council to additionally offer on the website an opportunity for any Respondent requesting it a copy of the supply agreement which the

Council has entered into with an energy supplier. This will be available free of charge for a period of 30 days following publication of the award information.