



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/23UF/LDC/2024/0015
Property	:	Various leasehold properties, where Stroud District Council is the superior landlord
Applicant	:	Stroud District Council
Representative	:	Ms E Nolan Stroud District Council
Respondents	:	178 (One Hundred and Seventy-Eight) leaseholders (Schedule at Appendix 1)
Representative	:	None
Type of Application	:	Retrospective dispensation from the statutory consultation requirements to consult lessees about a long term qualifying agreement which has been entered into, section 20ZA of the Landlord and Tenant Act 1985
Tribunal Members	:	Mr J G G Wilson MRICS FCI Arb Mrs J Coupe FRICS - Regional Surveyor
Date of Decision	:	9 January 2025

DECISION

The Decision

1. The Tribunal grants the application for retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the statutory consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of the long term qualifying agreement entered into by the Applicant for the electricity supply.
2. This retrospective dispensation is limited to the long term agreement for the electricity supply, of which the Tribunal has not been provided with a copy.
3. This decision does not affect the Tribunal's jurisdiction upon any future application from the leaseholders to make a determination under section 27A of the 1985 Act in respect of the reasonableness and/or cost(s) associated with the qualifying long term agreement.

Background and the Application

4. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for retrospective dispensation from the statutory consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of a qualifying long term agreement for the electricity supply.
5. The application is dated 9 July 2024.
6. The properties are described in the application as 'See attached spreadsheet – All leasehold properties owned by Stroud District Council'. A schedule of the leaseholders and their respective property's number is at Appendix 1. The Applicant describes the properties as 'The property portfolio [sic] comprising of flats sold either through Right to Buy or resold on the open market.'
7. The Applicant explains under 'Grounds for seeking Dispensation' in the application '1. Stroud District Council came out of contract with its Utility provider. Due to the volatile market at the time and lack of options we were under pressure to enter an agreement.' The Applicant goes on to say at '2. No consultation has taken place and a contract had to be entered into due to the volatility [sic] in the energy market.'
8. In its explanation to seek dispensation, the Applicant says, '3. Given that the fuel procurement process in an extremely volatile market is such that supplier submit prices up on the basis that they can be withdrawn at very short notice. Offers may be available for a few hours only. In order to obtain the best utilities price the applicant needs to act within this short window. Given these circumstances it was impractical,

and impossible for the applicant to properly comply [sic] with the consultation requirements.'

9. The Tribunal gave Directions on 25 October 2024 listing the steps to be taken by the parties in preparation for the determination of the application.
10. The Directions stated the Tribunal would determine the application on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 14 days of the receipt of these Directions.
11. The only issue for the Tribunal is whether or not it is reasonable for the Applicant to have dispensed with the statutory consultation requirements. This application is not about the price(s) (cost(s)) for the electricity supply in the new agreement (contract). The leaseholders have the right to make a separate application to the Tribunal under section 27A of the 1985 Act to determine the reasonableness of those prices (costs) and their respective contributions payable through the service charge provisions in their leases.

The Law

12. Section 20 of the 1985 Act and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease per 12 month period, the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum per annum unless the required consultation processes have been undertaken or the requirement has been dispensed with by the Tribunal. An application to the Tribunal may be made retrospectively.
13. The relevant section of the 1985 Act reads as follows:

S.20 ZA (1) Consultation requirements: supplementary
Where an application is made to [the appropriate 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.
14. In *Daejan Investments Limited v Benson and Others* [2013] UKSC 14, the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the 1985 Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state "*it seems to me that the issue on which the [tribunal] 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”.

15. Furthermore, and following *Daejan v Benson*, the Tribunal has power to grant dispensation on terms.

Consideration and Decision

16. The Tribunal first considered whether it felt able to decide this application reasonably and fairly based on the papers submitted only, with no oral hearing. Having read and considered the papers and given that the application remained unchallenged the Tribunal decided it could do so.
17. The Directions state, paragraph 14, ‘The application shall stand as the Applicant’s case’.
18. The Tribunal stated in the Directions ‘the grounds for seeking dispensation that have been provided by the Applicant are somewhat sparse.’ Whereas a list of the leaseholders is provided in an Excel workbook titled ‘Electricity list dispensation. Up to date_ [sic], which comprises two sheets: (1) List; and (2) Name and Addresses, a copy of the agreement (contract) it is understood by the Tribunal to have been entered into has not been provided. Accordingly, the Tribunal has neither the dates the agreement is signed, nor that which it is effective from.
19. The Directions attached a reply form for the Respondents with a date for it to have been completed and to have been returned by to the Applicant to confirm whether the Respondents: (1) agreed with the application, or not; and (2) similarly agreed the Tribunal may decide the matter on the basis of written representations only (no hearing), or not.
20. The Directions include provisions in the event the Respondents oppose the application.
21. Thereafter the Directions give the date by which the Applicant is to confirm to the Tribunal that no objections have been received from the Respondents, if applicable, being 6 December 2024.
22. In its email to Stroud District Council dated 6 December 2024, the Tribunal sought confirmation, or otherwise, from the Applicant whether any objections had been received from the Respondents. Ms E Nolan (Leasehold Engagement Officer, Stroud District Council) in her email dated 9 December 2024 says, ‘We had enquiries, we have not however, received any formal objections.’
23. The bundle includes copies of the leases of four of the properties listed in the schedule at Appendix 1. The leases are drafted in two differing forms, each of which has been engrossed. Notwithstanding the differing

forms of draft, each includes covenants for: (1) the tenant to pay a service charge, with its associated apportionment mechanism; and (2) for the landlord to keep in repair and maintain cables, meter cupboards, conduits, electricity cables ducts conduits and wires, inter alia.

24. The reason why retrospective dispensation from the consultation requirements of the 1985 Act is sought by the Applicant is that having come out of contract with its Utility provider and due to the volatility in the market for the procurement of fuel, Stroud District Council was obliged to act to enter into a new agreement (contract) with its potential new supplier in a timeframe such that to follow the consultation requirements would have been impracticable.
25. At paragraph 18 above, the Tribunal says it has not been provided with a copy of the agreement (contract) for which retrospective dispensation is sought. However, under Grounds for seeking Dispensation, the Applicant says it had come out of contract with its Utility provider. In addition, the Excel workbook within the bundle (the schedule of leaseholders) is titled 'Electricity list dispensation...'. Accordingly, this Decision on Stroud District Council's retrospective application to dispense with the requirements of the consultation processes under the 1985 Act is limited to its contract, understood to having been entered into before 9 July 2024, with respect to electricity supply only.
26. It is not the intention of this Tribunal to discuss and to expand on the Global energy crisis extant at the time it is understood the Applicant entered into its new agreement (contract), suffice for it to acknowledge that any offer for a new agreement (contract) at whatever price would have only been open for a limited time, such was the nature of the fuel procurement market in the first six months of 2024. As the Applicant says in its application, 'Offers may be available for a few hours only.'
27. To that end, there having been no objections to the application for retrospective dispensation of the consultation requirements from any of the leaseholders, coupled with none of the same having asserted that any prejudice has hitherto been caused to them, the Tribunal consequently finds that it is reasonable for Stroud District Council to have dispensed with the consultation requirements under the 1985 Act prior to having reached agreement and entered into contract with its electricity supplier.
28. Thus, the Tribunal grants the application from Stroud District Council dated 9 July 2024 for retrospective dispensation under section 20ZA of the 1985 Act from the statutory consultation requirements imposed on the landlord by the same.
29. This retrospective dispensation is limited to the long term agreement, understood to have been entered into for the electricity supply.

RIGHTS OF APPEAL

30. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case. All communications must clearly state the Case Number and the address(s) of the premises.
31. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
32. If the person wishing to appeal does not comply with the 28 days' time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 days' time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
33. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.