FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**MAN/00CX/LDC/2024/0601**
Property	:	**Colonnade, Sunbridge Road, Bradford**
Applicant	:	**Colonnade Estate Ltd**
Respondents	:	**The residential long leaseholders of apartments at the Property**
Type of Application	:	**Landlord & Tenant Act 1985 – Section 20ZA**
Tribunal Members	:	**Judge A Davies** **J Gallagher MRICS**
Date of Decision	:	**9 June 2025**

DECISION

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1. The consultation requirements contained at section 20 of the Landlord and Tenant Act 1985 are dispensed with in relation to the qualifying long-term agreement for the supply of electricity over a period of 3 years made between SSE Energy Supply Ltd ("SSE") and the Applicant on or about 28 July 2022.

2. The Applicant's costs of this application may not be recovered from the Respondents via the service charge provisions of their leases or otherwise.

REASONS

The electricity supply

1. On 17 July 2020 the Applicant was registered at HM Land Registry as the proprietor of Colonnade, Sunbridge Road, Bradford ("the Property"). The Property consists of two adjacent buildings which are occupied as Houses in Multiple Occupation ("HMOs"). Together they contain 278 leased rooms. The Respondents are the long leaseholders of those rooms. The rooms in each of the two buildings are let under different forms of lease. In each building communal kitchen and dining facilities are provided for use by the occupants.

2. There is a single electricity supply to the Property. Under the terms of the leases, the Applicant is required to arrange and pay for the electricity, which supplies the communal areas of the Property as well as the individual leased rooms. A proportion of the cost is recoverable from each of the Respondents via the service charge provisions of the leases.

3. When the Applicant purchased the Property in 2020 the electricity was supplied by SSE by virtue of a contract with the former owner under which electricity was charged on the basis of Variable Business Rates ("VBR"). The contract was transferred to the Applicant.

4. The Applicant appointed energy consultants to negotiate terms for on-going electricity supplies to the Property. A new contract with SSE took effect on 17 February 2021 and was expressed to expire on 31 March 2022. Under this contract SSE charged the Applicant as follows

   Day units charged at 19.103p/kWh
   Night units charged at 14.874p/kWh
   Monthly charge £53.95
   Other charges £8,147.28
   Average price p/kWh 19.053p
   Total (over 12 months) £147,350.99

5. The Applicant did not negotiate with SSE or any other electricity supply company for a replacement contract to take effect on 1 April 2022. Its contract with SSE provided that if, on termination of the 2021 contract, the Applicant had not appointed a new supplier the SSE contract would continue save that with effect from the termination date the negotiated tariffs would come to an end and the electricity supply would be charged at SSE's VBR, which was considerably higher than any fixed contract tariff.

6. Between 1 April 2022 and 28 July 2022 the Applicant and SSE negotiated a new contract ("the August 2022 Contract") for the supply of electricity to the Property for a period of 36 months from 1 August 2022. The August

2022 Contract was a Qualifying Long-term Agreement ("QLTA) subject to the requirement for consultation under section 20 of the 1985 Act. The agreed terms were

Day units charged at 40.536p/kWh
Night units charged at 32.216p/kWh
Monthly charge £1,084.66
Other charges £32,833.47
Average price p/kWh 40.520p
Total over 36 months £1,172,459.74.

7. Further SSE contract terms provided that invoices were to be paid within 14 days, and that in the event of failure to pay SSE were entitled to terminate the contract or stop the electricity supply. Interest and costs under the Late Payments of Commercial Debts (Interest) Act 1988 would be applied in the event of delayed invoice payments. If the contract was terminated for non-payment, the supply of electricity would continue but VBR would be charged.

8. The Applicant did not pay SSE invoices within the contract terms. Penalties, interest and additional charges were applied. As at 23 October 2023 the amount owing, in addition to any legal costs, was said by SSE to be

Outstanding invoices	£697,484.07
Interest and late payment fees	£94,688.97
Total	£792,173.04

The Law

9. Section 20 of the Landlord and Tenant Act 1985 ("LTA 1985") and regulations made under that section set out a detailed consultation procedure to be followed by property managers who intend to enter into a QLTA, where any leaseholder may be expected to have to contribute more than £100 to the annual cost. If the consultation procedure is not followed, each leaseholder's contribution to the cost is limited to £100 a year.

10. Section 20ZA, LTA 1985, permits a manager to apply to the Tribunal for dispensation from the consultation requirement. The leading case on the application of section 20ZA is Daejan Investments v Benson [2013] UKSC 14, in which Lord Neuberger, in summary, said that the tribunal should focus on the extent, if any, to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations. He described such prejudice (at paragraph 65 of his judgement) as a disadvantage "*which they would not have suffered if the requirements had*

been fully complied with, but which they will suffer if an unconditional dispensation were granted". It is for the leaseholders to show that they have been prejudiced, and it "*does not appear onerous to suggest that the tenants have an obligation to identify what they would have said* [by way of representations in response to a section 20 consultation]*, given that their complaint is that they have been deprived of the opportunity to say it"* (at paragraph 69 of the judgement).

The application

11. On 8 October 2024 the Applicant applied to this Tribunal for dispensation from the section 20 consultation requirements in respect of the August 2022 Contract. The application states that consultation did not take place due to an oversight. The Tribunal has no witness statement on behalf of the Applicant, and there is no explanation as to (1) why the Applicant failed to arrange for an electricity supply contract with agreed tariffs to take effect on 1 April 2022 or (2) why SSE invoices have not been paid on time.

12. The Applicant says that there was "*very little (if any) choice in the market*" and that a section 20 consultation "*would not have achieved any saving for the lessees".* It says that if a consultation had taken place, the cost of electricity would have been higher "*as* [the lessees] *would have continued paying on the variable rate basis until a new contract was entered into*." This appears to be a reference to the fact that the minimum period required to conduct a section 20 consultation is approximately 3 months. The Applicant claims "*in these circumstances the lessees have benefitted because* [the August 2022 Contract] *is on the standard rate, as opposed to the variable rate that was being charged at the end of the 2021 supply agreement."* This must be a reference to the VBR that was applied from 1 April 2022 because the Applicant had not renegotiated the contract which expired on 31 March 2022.

The Respondents' case

13. Many of the Respondents have lodged objections to the application. Those objections may be summed up briefly as follows:

(a) The Applicant has failed in its management obligations, particularly as regards the production of information and accounts, and failure to obtain an HMO licence for the Property. Dispensation from the consultation requirements "*would send a message that freeholders can wilfully disregard statutory consultation obligations and later seek retroactive endorsement through the Tribunal*" (Dr A M Abouelmagd and others).

(b) There would have been no time constraint had the Applicant prepared adequately for the end of the supply contract on 31 March 2022;

Consultation could and should have taken place in time for an orderly replacement of that contract;

(c) Electricity prices "*came down significantly"* (per Mr H Mehta) in the 12 months after July 2022 so savings would have resulted if the decision to enter into the August 2022 Contract had not been made "*under duress*", ie when VBR was already being applied;

(d) With or without proper consultation, no alternative quotations for an electricity supply were obtained and the best deal was not investigated;

(e) By omitting to consult, the Applicant has been grossly incompetent and should not be protected from the consequences of its failures;

(f) The Applicant has received service charge payments from the Respondents for electricity costs and is believed to have used the payments elsewhere. Misappropriation has been suspected;

(g) The process for a section 20 consultation would have been simple for the Applicant and the cost would have been low. There was no reason for failure to consult except incompetence;

(h) Mismanagement of the Property has resulted in a substantial reduction in the market value of the leases;

(i) The Applicant is claiming service charges in breach of section 20B of the LTA 1985 and has failed to explain how electricity debts have been apportioned across the leasehold units. Dispensation should not be considered until the Applicant has provided full financial records, justified the service charges and how they are apportioned and complied with its statutory requirements (per I Shafiq);

(j) Dispensation would deny the Respondents their right to transparency, scrutiny and value for money. The application is a retrospective attempt to obtain ratification for a decision made unlawfully and unilaterally to the detriment of leaseholders and investor confidence in the property market (per F Ahon);

(k) Despite requests, the Applicant has failed to provide a breakdown of the electricity costs.

14. Some Respondents have also sought an order from the Tribunal that the Applicant's costs of this application may not be added to the service charge account.

15. Some Respondents have requested that if dispensation is granted, conditions should be applied, namely (1) a cap on recoverable costs; (2) an independent audit of the SSE contract and charges; (3) disclosure of historical management correspondence and expenditure; and (4) mandatory leaseholder participation in future long-term agreements.

Decision

16. It is clear to the Tribunal that the cost of electricity supplied to the Property has substantially increased as a result of the Applicant's failure competently to manage the SSE contracts. The decision to enter into the August 2022 Contract was taken under pressure because VBR was being applied following termination of the previous contract on 31 March 2022. It appears that subsequently interest, penalties and increased rates p/kWh have been applied by SSE as a result of the Applicant's failure to pay electricity invoices on time or at all. The electricity costs and any other disputed service charges will no doubt be subject to scrutiny by the Tribunal following the applications under section 27A of the 1985 Act which have been mentioned by a number of the Respondents. In those proceedings, the reasonableness and payability of the service charges will be determined following a full enquiry into the service charge accounts and any supporting invoices.

17. This application is not the place for such an enquiry. The scope of the current application is strictly limited to whether dispensation should be granted in respect of the consultation which should have taken place before the August 2022 Contract was signed.

18. To oppose a section 20ZA application successfully the Respondents must show that they have suffered some financial prejudice as a result of the failure to consult. The Respondents have not been able to do that in this case. There is no evidence as to what alternative tariffs might have been available in or about July 2022.

19. Daejan Investments v Benson is authority for the principle that the dispensation jurisdiction is not to be regarded as an opportunity to punish or to make an example of the Applicant. The question for the Tribunal is simply to determine whether the leaseholders have been prejudiced by paying for an inappropriate QLTA or by paying more for it than was appropriate. Neither the gravity of the Applicant's failure to comply with section 20 nor the degree of its culpability nor the financial consequences for the Applicant if it failed to obtain dispensation is a relevant consideration for the Tribunal.

20. On this basis, it is right to grant dispensation, on the ground that there is no evidence that the **failure to consult** caused the Respondents any financial loss.

21. The conditions requested by the Respondents, in the event that dispensation is granted, have been considered by the Tribunal. The Tribunal is not in a position to determine what electricity costs are properly recoverable and cannot apply a cap. A full investigation into the payability of service charges by the First-tier Tribunal will be available if any Respondents make section 27A applications. The provisions of section 20 will apply to any future QLTAs. The Tribunal concludes that none of the conditions requested by the Respondents is required for their protection or benefit.

22. The Applicant gives its reason for failure to consult as an "oversight". The manager of a large block of residential units such as Colonnade has no justification for being unaware of, ignoring or forgetting its section 20ZA obligations. The present application was not made within a reasonable time after the failure occurred, and in the meantime the leaseholders have had reason to complain of further accounting and other issues, leading to transfer of management to an RTM company. The Tribunal determines that it would not be reasonable to order dispensation without making a further order, that the Applicant's costs of this application may not be recovered from the Respondents via the service charge or otherwise.