



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

**Case Reference  
HMCTS Code** : **CAM/22UJ/LDC/2021/0056  
P:PAPERREMOTE**

**Property** : **All properties that receive  
landlord's lighting and district  
heating services within the District  
of Harlow Council**

**Applicant** : **Harlow District Council**

**Respondents** : **The tenants who pay service  
charges in respect of the above  
services**

**Type of Application** : **For dispensation of the  
consultation requirements under  
section 20ZA**

**Tribunal Member** : **Judge Wayte**

**Date of Decision** : **15 February 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers. A face-to-face hearing was not held because all issues could be determined in a remote hearing on paper and no hearing was requested. The documents that I was referred to are in a bundle of 73 pages, the contents of which I have noted. The order made is described below.

**The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements as set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”) in relation to the placing of energy supply contracts for landlord’s lighting or district heating to the relevant properties.**

### **The application**

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements in respect of a qualifying long-term agreement for the supply of landlords’ lighting and/or district heating serving all properties within the district of Harlow Council. The application indicated that there are a total of 5503 domestic properties affected, both tenanted and leasehold, over 586 flat blocks.
2. The respondents are the tenants or leaseholders of those properties who will be responsible for part of the cost of those supplies as part of their service charge liability. This application has no relevance to individual electricity supply on a domestic basis: the tenants or leaseholders will be free to continue to obtain their personal electricity from the supplier of their choice.
3. The issue in this case is only whether the consultation requirements of section 20 of the 1985 Act and the Regulations should be dispensed with. If there is any issue as to the cost of the supply that may be the subject of a separate application under section 27A of the Landlord and Tenant Act 1985.

### **The background**

4. The application was received on 15 December 2021 and directions were initially ordered on 17 December 2021 but subsequently amended on 20 December 2021. Those directions required the applicant to write to the respondents informing them of the application and the timetable for any objections. A website address was to be provided for a copy of the application, directions and any other relevant documents. The applicant’s bundle contains a copy letter dated 24 December 2021 containing the required information, including confirmation of the process for taking part in the proceedings. The tribunal received one reply form from a leaseholder but no statement setting out their objections. A number of informal queries were also received by the council and a summary was included in the hearing bundle as detailed below.

5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers on 15 February 2022.
6. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act and the Regulations.

### **The Applicant's case**

7. The applicant's bundle included a witness statement by Kevin Jackson, employed by Inspired Plc, the retained energy consultants to the council. He explained that the current agreement for both gas and electricity supplies expires on 31 March 2023. This application was being made in good time to allow for its renewal from 1 April 2023 to 31 March 2026.
8. The current high cost of energy is well known, with the key factor being the wholesale price, although Government taxes and levies have also increased the cost to the consumer. Mr Jackson states that a longer term contract should lead to a better procurement outcome for the council, together with reduced administration costs and enhanced risk management both in terms of price peaks and dips and supplier registration processes.
9. The renewal is to be by way of an access agreement with the Central (energy) Purchasing Body and call-off contracts with suppliers. This flexible procurement framework is not compatible with the consultation requirements under the 1985 Act as transactions have to be made in minutes to secure the price. Mr Jackson states that in these circumstances it is not possible for the council to act in the leaseholders' best interests as set out in the Public Contract Regulations while following the section 20 consultation procedure.
10. As stated above, the council wrote to all affected parties on 24 December 2021 setting out their proposals and giving details of the information available about the application on their website, together with some Frequently Asked Questions and answers (FAQs) about communal energy and dispensation. Formal responses were to be sent to the tribunal by 24 January 2022 in accordance with the directions.

### **The Respondents' position**

11. The directions provided for the respondents to complete the reply form attached to the directions and send it to the tribunal and the Applicant if they wished to object to the application. One form was received by the tribunal on 11 January 2022 but no accompanying statement setting out the nature of the objections was received by the council or the tribunal. When contact was made with the leaseholder by the tribunal office it appeared that he may have been confused about a possible

effect on his own personal supply. The FAQs referred to above explained that the application would not affect any existing arrangements any leaseholder already had for gas and/or electricity supplies for their home.

12. The bundle contained a summary of other informal responses received by the applicant on its website. One of the queries was also seeking to understand the difference between personal and communal supply. The other wanted information about the appointment of the energy consultants.
13. In the absence of any formal response setting out the basis of any objections to dispensation, the tribunal considers that it is, in effect, unopposed.

### **The Tribunal's decision**

14. The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the new contract for the supply of landlord's communal electricity or District heating described above.

### **Reasons for the Tribunal's decision**

15. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
16. The application was effectively unopposed by the leaseholders. The tribunal is further satisfied that there is no prejudice to them by enabling the applicant to work with its energy consultants to obtain the best market price and avoid any practical problems caused by the consultation requirements under the Regulations.

### **Application under s.20C Landlord and Tenant Act 1985**

17. There was no application for any order under section 20C (limiting the ability of the landlord to seek their costs of the application as part of the service charge) before the tribunal.

**Name:** Judge Wayte

**Date:** 15 February 2022

## **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).