



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

**Case Reference** : **MAN/00BN/LDC/2022/0036**

**Property** : **Montgomery House, Demesne Road,  
Manchester M16 8PH**

**Applicant** : **Marden Limited**

**Representative** : **Landsmoor Carr Limited**

**Respondents** : **Long Leaseholders at the Property**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 20ZA**

**Tribunal Member** : **Judge L Bennett**

**Date of determination** : **25 October 2022**

**Date of Decision** : **20 December 2022**

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**DECISION**

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## **Application**

1. Marden Limited applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) to enable it to enter in to a long-term energy agreement of 24 months in relation to Montgomery House, Demesne Road, Manchester M16 8PH (the Property).
2. The Respondents are Leaseholders at the Property who were identified in lists submitted to the Tribunal by the Applicant, together with a specimen lease.

## **Grounds and Submissions**

3. The application was received by the Tribunal on 4 May 2022.
4. The Applicant is the Freeholder of the building.
5. The Tribunal did not carry out an inspection but understands that the Property consists of 2 buildings, one of 82 single room units and one of 148 single room units. In addition, in the larger of the 2 buildings, there are 2 one-bed self-contained units. Both buildings are registered with Manchester City Council as HMO housing. All have associated shared kitchen and bathroom facilities.
6. On 1 August 2022 a Tribunal Legal Officer made directions requiring the service of documents by the Applicant on each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. In response to directions the Applicant has provided a statement of case with supporting documents.
8. The Applicant's statement of case sets out a chronology of events and the reasons for the application to the Tribunal for dispensation from the consultation requirements.
9. The contract for supply of electricity ended on 31 May 2022. A new contract was required to avoid defaulting into an expensive standard variable rate per kilowatt of electricity supply. Research into a new contract began in April 2022. The cost per kilowatt was rising week by week. UK electricity prices are linked to the wholesale gas price on the wholesale market. Significant high demand from China and the Ukraine war was pushing up prices and prices were set to significantly increase throughout 2022/23.
10. Initial investigation indicated that a standard 12 months' contract would be the most expensive. Quotations were requested from energy companies for prices based on 12/24/36 months' contracts. Appendix A to the Applicant's statement of case shows the estimated and actual costs for Montgomery House for the year 2021-22. Appendix B provides a summary of the accepted quotation from SSE. There were issues that limited the options for suppliers:
  - a) Montgomery House is treated as a business supply, not as residential, therefore any Ofgem price capping would not be applicable.

b) Montgomery House exceeds 307,000 kwh per year, which limited the number of supply companies that would quote prices.

c) Electricity prices were increasing weekly, so it was important to obtain a new contract as soon as possible.

d) Cost differences between 12 month's contract and longer were significant. A 24 month's contract was sought on the advice that price pressures would decrease after 24 months which would provide the most flexibility.

11. The escalating market price for electricity made it important that a contract be negotiated as soon as possible. It was considered that a consultation exercise would take too long and therefore be detrimental to the Leaseholders. Drax and SSE were identified as the preferred suppliers. However, there was speculation that Drax would not survive in its current format. It was at the centre of an international court case for misleading statements on climate change emissions. A contract with SSE was therefore agreed from 1 June 2022.
12. The Tribunal did not receive any submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.
13. The Tribunal convened without the parties to make its determination on 25 October 2022.

## **Law**

14. Section 18 of the Act defines "service charge" and "relevant costs".
15. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
16. Section 20 of the Act provides:
  - (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-*
    - (a) *complied with in relation to the works or agreement, or*
    - (b) *dispensed with in relation to the works or agreement by (or on appeal from) a tribunal*
  - (2) *In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement*
  - (3) *This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*
  - (4) *The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-*
    - (a) *if relevant costs incurred under the agreement exceed an appropriate amount,*

or

*(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.*

*(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*

*(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined”*

17. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

18. Section 20ZA of the Act provides:

*(1) Where an application is made to a tribunal for a determination to dispense with all or any 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*

*(2) In section 20 and this section-*

*“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to section (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

### **Tribunal’s Conclusions with Reasons**

19. I have determined this matter following a consideration of the Applicant’s case but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.

20. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
21. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Applicant wishes to mitigate the cost to the Respondents that will arise from any increase in the price of electricity and, in the current economic climate, such increase is likely to be considerable.
22. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.
23. The granting of dispensation does not affect the Respondents’ rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act once the proposed costs have been incurred.

## **Order**

24. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 to enable the Applicant to enter into a qualifying agreement is granted. This is in respect of their current energy contract that runs from 1 June 2022 for 24 months and relates to Montgomery House, Demesne Road, Manchester M16 8PH.

**Laurence J Bennett**  
**Tribunal Judge**  
**25 October 2022**

