



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

Case Reference : **LON/00AT/LDC/2015/0121**

Property : **Residential Long Leasehold
Properties in London Borough of
Hounslow**

Applicant : **London Borough of Hounslow**

Representative : **Mr Bob Huffam,
In-house solicitor**

Respondent : **Various – all Residential Long
Lessees**

Representative : **None**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985 – dispensation with the
consultation requirements in
respect of a proposed qualifying
long term agreement**

Tribunal Members : **Judge John Hewitt
Mr Neil Martindale FRICS**

**Date and venue of
Hearing** : **25 January 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26 January 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that it grants dispensation to the applicant such that the applicant is not required to comply with the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of two qualifying long term tri-partite agreements proposed to be entered into by the applicant with:

(1) Kent County Council (LASER) and Npower for the supply of electricity; and

(2) Kent County Council (LASER) and Total Gas and Power Limited for the supply of gas

for the four-year period commencing 1 October 2016

2. The reasons for our decisions are set out below.

Procedural background

3. This is an application by the applicant, London Borough of Hounslow (the council), made pursuant to section 20ZA Landlord and Tenant Act 1985 (the Act).
4. Directions were given on 27 November and 14 December 2015. The latter set of directions set out material background information.
5. Pursuant to the directions the council filed a further statement of case dated 8 January 2016 to which were appended a number of documents. In that further statement of case the council withdrew part ion with the two contracts entered into in 2009 and 2012. Consequently, the application now only concerned two proposed qualifying long term agreements which the council intend to enter with regards to the supply of electricity and gas from 1 October 2016 onwards

The resumed hearing

6. The hearing of the application came on before us on 25 January 2016.

The council was represented by an in-house solicitor, Mr Bob Huffam who was accompanied by:

Mr Charles Pipe	Energy manager
Mr Rory Prendergast	Sustainability officer
Ms Hayley Cooper	Leasehold project officer
Ms Julia Greenwood	Interim head of specialist housing

Mr Manpreet Gill a long lessee of a property at 3 Wentworth Court, Southall UB2 5TR was again also present and he participated in the hearing.

7. The council had not provided with its further statement of case all of the materials identified in the further directions dated 14 December 2015; some further materials were handed in during the course of the hearing and there was also a short adjournment to enable some further documents to be sent over by fax and then explained to us.
8. In summary, LASER, an organisation operated by Kent County Council, has accumulated experience and expertise in the bulk purchase of energy, principally gas and electricity on behalf of some 120 organisations, mostly local authorities and like organisations. The concept of bulk purchase by national and local government buyers has been approved by central government and is supported.
9. The council entered into arrangements via LASER in 2009 and 2012 and found them to have been beneficial. Evidently the council is a substantial purchaser of energy, a small amount of which is used to light council estates and internal common parts in blocks on those estates; and to heat its six district heating schemes. Some of the costs incurred are passed on to long lessees through service charge arrangements.
10. The council now wish to enter into two more contracts via LASER for the supply of energy for four years from 1 October 2016. By entering into such an arrangements LASER is able to use its substantial buying power and expertise to make forward fixed term purchases from time to time at prices deemed to be competitive and lower than individual purchasers would be able to achieve in the market on their own.
11. The council claimed that its experience in the past showed benefits and cost savings had been achieved. They demonstrated this to us by taking us through some examples over the period from 2009 to December 2015 and we were satisfied that the prices and standing charges we saw were competitive.

The law

12. Section 20 of the Act (and the regulations made pursuant to it) oblige a residential landlord to consult with long lessees before entering into a qualifying long term agreement, part of the costs of which are to be passed onto a long lessee where such costs exceed or might exceed £100 per year.
13. It was explained to us that those long lessees of the council who did not have the benefit of a district heating scheme would contribute to the costs of estate lighting and common parts lighting but their annual contributions to such costs were unlikely to exceed £100. However, that was considered not to be the case for those long lessees with the benefit of district heating schemes who were supplied with hot water for domestic and heating purposes. Hence the council saw the need to either consult with those long lessees or to seek dispensation.

14. The council chose to seek dispensation because it considered that it was unable to comply with consultation requirements since it was not able to set out the proposed purchase price(s) for energy and for other reasons set out in paragraph 3 of its further statement of case dated 8 January 2016.
15. Section 20ZA of the Act provides that this tribunal may make a determination to dispense with all or any of the consultation requirements set out in section 20 in relation to a qualifying long term agreement if it is satisfied that it is reasonable to do so.
16. In this case on the evidence (eventually) provided to us by the council we are so satisfied hence we have made the determination sought as regards the two proposed contracts.
17. As we understand it LASER will recommend purchase contracts to the council going forward at such prices and for such periods as the expertise available to LASER judges appropriate having regard to prevailing market conditions and such forecasts as it may have. Inevitably there is some risk, the energy market can be volatile and even the best of predictions do not always come to pass. However, given the past performance of LASER and the greater expertise and buying power it is able to bring to bear we are satisfied that this is a reasonable course for the council to adopt.
18. Evidently fixed four year terms enable LASER to plan ahead and to maximise its buying power. We were told that although the council is a substantial buyer of energy it represents only about 1.5% of LASER's business.
19. Of course whilst we have dispensed with the need for the council to consult with its long lessees on these two proposed contracts we do not make any findings that the prices for energy that may be ultimately achieved by LASER on behalf of the council will be reasonable in amount and in due course it will be open to a long lessee to seek a determination on the reasonableness of the price(s) achieved when known and billed.

Judge John Hewitt
26 January 2016.