



12906

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

**Case Reference** : **BIR/OOGG/LDC/2016/0009**

**Property** : **Various properties (218 in total) in Market Drayton; Wem, Shrewsbury; Whitchurch; Ludlow, and Rock Green all in Shropshire**

**Applicants** : **Shropshire Housing Group (SHG); South Shropshire Housing Association (SSHA), and Meres and Mosses Housing Association (MMHA)**

**Representative** : **HG, SSHA, MMHA and Inenco**

**Respondents** : **Various – as detailed in the schedule accompanying the application**

**Representative** : **None**

**Type of Application** : **Under Section 20ZA of the Landlord & Tenant Act 1985 (“the Act”) for dispensation from the consultation requirements in respect of a prospective long term agreement**

**Tribunal Members** : **N R Thompson – Deputy Regional Valuer (Chairman)  
Judge D S Jackson – Regional Judge**

**Date of Decision** : **21<sup>st</sup> March 2017**

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**ORDER**

## Preliminary

1. On 12 December 2016 the Applicants submitted an application seeking dispensation from the relevant consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”) in relation to the proposed procurement of a long-term energy contract (for a period of three years) so as to enable the Applicants to secure the most competitive energy prices for the Respondents during that period.
2. Following receipt of the application, the Tribunal issued Directions on 29<sup>th</sup> December 2016 requiring the Applicants to forward a copy of the application and associated papers to the Respondents, as well as the appropriate Tenants’ Associations, together with an appropriate covering letter of explanation and an invitation to lodge any objection to the application by not later than 27<sup>th</sup> of January 2017.
3. On 15<sup>th</sup> February 2017, the Applicants confirmed that (a) they had complied with the Tribunal’s Directions of 20<sup>th</sup> December 2017, and (b) they had not received any objections to the application.
4. Further Directions were then issued on 20<sup>th</sup> February 2017 requiring the Applicants to confirm to each of the Respondents that no objections to the application had been received; that no further action was required by any of the Respondents, and that the Tribunal would proceed to determine the application solely on the basis of the written submissions of the Applicants and without an oral hearing.

## The Application

5. The need for an application in this case stems from the requirements of section 20 of the Act, the relevant parts of which state:

### **“20 Limitation of service charges: consultation requirements**

**Where this section applies to any ... qualifying long-term agreement, the relevant contributions of tenants are limited... unless the consultation requirements have been either –**

**complied with in relation to the .. agreement, or**

**dispensed with in relation to the.. agreement by (or on appeal from) a First tier Tribunal.”**

- 6 The consultation requirements are prescribed by regulations made by the Secretary of State in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
- 7 In the present context, these provisions only apply in those cases where the relevant contribution of any tenant under the qualifying long-term agreement exceeds £100 in any accounting period – Regulation 4 of the Regulations.

- 8 A qualifying long term agreement is defined in section 20ZA (2) of the Act as, “.. an agreement entered into by or on behalf of the landlord .. for a term of more than 12 months.”
- 9 Consequently, for the Applicant in this case to enter into the proposed long long-term agreement necessitates either compliance with the relevant consultation requirements or otherwise, the formal grant of dispensation by the Tribunal. For entirely practical reasons, the Applicant has chosen to make a dispensation application to the Tribunal.
- 10 In considering whether or not dispensation should be granted, the Tribunal must take into account a variety of statutory provisions as well as relevant case law, and must only make an appropriate order if it is satisfied that it is reasonable to dispense with the consultation requirements.

### **Decision**

- 11 The purpose of the consultation requirements in the context of the application before the Tribunal is to ensure that the Respondents are protected from paying more than would be appropriate under the intended long term agreement, and the principal focus for the Tribunal’s consideration is the extent, if any, to which the Respondents are likely to be prejudiced by the failure of the Applicants to comply with the consultation requirements. The leading authority for the way in which the Tribunal should approach that question is the decision of the Supreme Court in *Daejan Investments Ltd V Benson [2013] UKSC14, [2013]H.L.R.21* which determined (amongst other issues) that the correct approach for considering whether or not an application for dispensation should be granted was - as indicated above - the extent to which the tenants might be prejudiced by a lack of consultation. In considering that issue, the legal burden of proof rests with the Applicants but the factual burden of identifying some relevant prejudice (normally, a financial prejudice) rests with the Respondents.
- 12 In this case, none of the Respondents has raised any objection to the application or indeed has made any comment on it and as such they have not identified any relevant prejudice.
- 13 **Accordingly, the Tribunal considers it is reasonable to dispense with the consultation requirements in this case and therefore orders that the application for dispensation from the relevant consultation procedures under the Act and the Regulations be granted.**
- 14 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which they intend to rely in the appeal.

N R Thompson  
Chairman

21<sup>st</sup> March 2017