



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

Case reference	:	LON/00AU/LDC/2022/0188P
Properties	:	Various residential leasehold properties in the City of London Borough of Islington
Applicant	:	The London Borough of Islington
Representative	:	Predrag Suzic – In-House Legal Services
Respondents	:	The residential leaseholders of the Properties, as referred to in the application
Type of application	:	Dispensation from compliance with statutory consultation requirements
Tribunal members	:	Judge P Korn Mr S Mason FRICS
Date of decision	:	9 January 2023

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondents did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal dispenses unconditionally with the statutory consultation requirements in respect of the qualifying long-term agreements (“**QLTAs**”) which are the subject of this application.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to two QLTAs.
2. The application is in respect of all residential leasehold properties in the London Borough of Islington where the Applicant is the landlord. The QLTAs in question are for the supply of electricity and gas.

Applicant’s case

3. The Applicant’s current contracts for the supply of electricity and gas are with Scottish and Southern Energy (SSE) and will now both end on 31 March 2023. These contracts were agreed in 2019 to cover the period 2020 to 2024. The contracts were not for purchasing energy at a fixed price but they allowed the Applicant access to the commodity markets. The Applicant made trades on the markets through SSE to purchase volumes of electricity or gas for defined periods. The commodity element of the electricity and gas was purchased flexibly, taking into account market conditions and the Applicant’s requirements as to when the supplies were needed or when the market was low.
4. For 2020/21 and 2021/22, the supplies for both financial years were purchased in full prior to the start of each year by making trades for the full volumes. However, significant volatility and price rises in the energy market from September 2021 onwards meant that the usual strategy of purchasing when the market was low could not be implemented. The Applicant therefore opted to purchase for shorter periods with the expectation that prices would eventually settle.
5. However, the ongoing war in Ukraine and Russia disrupted the flow of gas through the Nordstream pipeline and led to increased volatility and further price rises. This left the Applicant’s energy portfolio exposed to a high level of risk in terms of costs for 2023/24 onwards.
6. In order to mitigate its exposure to the market for 2023/24 onwards, the Applicant approached Public Buying Organisations (PBOs) to enquire whether they had secured supplies for 2023/24 in advance at lower than current market rates and whether they had sufficient spare

capacity for the Applicant to join. One PBO confirmed that this was the case. The rates at which that PBO had purchased were significantly below the market rate, offering a large potential saving for 2023/24. Based on market prices on 17 October 2022, the Applicant estimated that the commodity prices that it would secure through the relevant PBO for 2023/24 were around 30- 35% lower than market rates.

7. The Applicant then discussed with SSE the possibility of an early termination of the existing supply agreements. SSE agreed to this on the basis that the Applicant would pay a termination fee. The Applicant states that the fee was negligible in terms of the potential saving that could be achieved by switching to the PBO and that in any event it would be paid by the Applicant and not passed on to tenants and leaseholders.
8. In September 2022, the Applicant's Executive Committee agreed to enter into new energy supply contracts for electricity and gas with the relevant PBO and to terminate the existing contracts with SSE. The report was taken to the Executive Committee under the Applicant's urgency provisions due to the tight timelines. The PBO required the Applicant to contract with it at least 6 months before the start date of the supply contracts. As the supply contracts were due to start on 1 April 2023, this meant signing the contracts with the PBO by 30 September 2022. The contracts were duly signed on 29 September 2022. Each contract is expressed to last from 1 April 2023 to 31 March 2025 with the option of termination after one year if requested by 31 March 2023.
9. The Applicant was unable to carry out the required statutory consultation due to the short window of opportunity to secure the best priced contracts for the supply of gas and electricity. Pursuant to the tribunal's directions it wrote to leaseholders on 4 November 2022 informing them of the application for dispensation and explaining that copies of all relevant documents could be viewed on its website.
10. In the Applicant's submission, using the chosen PBO was a compliant route to market for the Applicant as the two relevant Framework Agreements for electricity and gas were formally tendered via OJEU and the winning bidders were appointed accordingly. This route to market was also compliant with the Applicant's Procurement Regulations, in particular Regulation 3.1.
11. The Applicant accepts that each contract is a QLTA for the purposes of Section 20ZA(2) and (3) of the 1985 Act. It submits that it could not have complied with the consultation requirements if it was to take advantage of the reduced prices obtainable through the use of flexible purchasing. It contends that its non-compliance with the applicable consultation regulations will lead to a direct benefit to leaseholders and that, therefore, it is manifestly reasonable to grant dispensation.

12. The determination bundle contains supporting witness statements from James Wilson (Acting Head of Energy Services for the Applicant) and from Richard Powell (Project Manager in the Applicant's Home Ownership Services Department) and other relevant supporting documents.

Responses from the Respondents

13. A small number of leaseholders have raised queries direct with the Applicant, and the Applicant has responded to these queries and included the queries and answers in the bundle. No leaseholders have written to the tribunal expressing any objections to the application for dispensation.

The relevant legal provisions

14. Under Section 20(1) of the 1985 Act, in relation to any qualifying long-term agreement "*the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal*".
15. Under Section 20ZA(1) of the 1985 Act "*where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any ... qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*".

Tribunal's analysis

16. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key consideration when considering an application for dispensation is whether the leaseholders have suffered any real prejudice as a result of the failure fully to comply with the consultation requirements.
17. In this case, there is persuasive evidence to indicate that there is a significant potential benefit to entering into these QLTAs and that it is not possible to do so whilst also complying with the statutory consultation requirements. The Applicant has seemingly provided leaseholders with such information as it reasonably could in the circumstances.
18. There are no objections before us from leaseholders, and the Applicant has dealt with such queries as have been raised – seemingly to the relevant leaseholders' satisfaction.

19. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements. Based on the evidence before us, we are satisfied that it is reasonable to dispense with the statutory consultation requirements due to the benefits of entering into these contracts, the impossibility of doing so whilst complying in a meaningful manner with the statutory consultation requirements, and the lack of objections from leaseholders.
20. Even when minded to grant dispensation, it is open to a tribunal to do so subject to conditions, for example where it would be appropriate to impose a condition in order to compensate for any prejudice suffered by leaseholders. However, there is no evidence before us that the leaseholders will suffer prejudice in this case and there have been no objections, and therefore it is not appropriate to impose any conditions.
21. Accordingly, we grant unconditional dispensation from compliance with the statutory consultation requirements.
22. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the energy supplies once known.

Costs

23. There have been no cost applications.

Name: Judge P Korn

Date: 9 January 2023

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. 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.