



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

Case reference : **LON/00AN/LDC/2020/0048**

Property : **Various Properties of the LBHF**

Applicant : **London Borough of Hammersmith
& Fulham**

Representative : **Legal Services
Ms. J. Mullins, Ref JSM**

Respondent : **The Leaseholders as per the
application**

Representative : **none**

Type of application : **Dispensation under s20ZA
Landlord and Tenant Act 1985**

Tribunal member : **Tribunal Judge Dutton**

Date of decision : **14th May 2020**

DECISION

Decisions of the Tribunal

- (1) This has been a remote determination on the papers which has been not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined on papers before me as was requested by the Council in its application. The documents that I was referred to are in a bundle of 179 pages, the contents of which I have noted.
- (2) I determine that dispensation should be granted from the consultation requirements under s20 of the Landlord and Tenant Act 1985 (the Act) and the Service Charges (Consultation Requirements)(England) Regulations 2003 as set out below at paragraph 1 and for the reasons I have stated.
- (3) I make no determination the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.

The application

1. The Council seeks a determination pursuant to s20ZA that there should be dispensation from the following dispensation requirements;

Dispensation is sought from the following paragraphs of Schedule 2 to the Regulations as regards:

- 4(2) providing the name and address of the other party to the contract and any connection it has with The Council.
- 4(4) providing an estimate of the relevant contribution to be incurred by the tenant;
- 4(5) providing an estimate of the total amount of expenditure under the proposed agreement;
- 4(6) providing a statement of the current unit cost or hourly or daily rate applicable;
- 4(7) providing a statement of the reasons why The Council cannot comply with sub-paragraph 4(6)(b) and the date by which an estimate can be provided; and
- 4(9) confirming the intended duration of the agreement

The Council also seeks the following conditions pursuant to the dispensation:

- The Council to provide to the Respondents within 21 days of entering into a contract information about:
 - i. The name of the energy supplier
 - ii. The date of the agreement
 - iii. The contract duration
 - iv. The date on which supply starts
 - v. The date on which the contract period ends

by uploading that information on its website.

- Free of charge to any Respondent requesting it, a copy of the supply agreement which the Council has entered into with an energy supplier.

2. The dispensation is sought in respect of the following services:
 - (i) The supply of electricity to blocks and estates and street properties for landlords' lighting, staircase lighting, lifts, estate lighting, boiler rooms and communal services such as door entry systems and fire alarms serving the residential leasehold properties.
 - (ii) The supply of gas to the boiler room on estates, communal block boilers and communal supplies on smaller blocks serving the residential leasehold properties.
3. The application is dated 11th March 2020 and directions were issued on 13th March 2020. As a result of the intervening Covid 19 pandemic the consideration of this matter has been delayed until now.
4. Directions invited each leaseholder to submit any objections by 31st March 2020. I am told by Kalpana Saini in a witness statement dated 15th April 2020 that although there were 18 observations no objections to the application were raised by an affected leaseholder.
5. In the papers before me is a copy of the application, a detailed statement of the grounds for dispensation, copies of two sample leases which are devoid of property details and are not overly helpful in making my determination. In addition to these documents there are statements from Ciaran Maguire relating to service of the application and directions and the aforementioned statement from Kalpana Saini detailing more information on the process leading to the acquisition of gas and electricity and addressing the impact of the pandemic.
6. I am told that the Council uses a Central Purchasing Body procurement strategy to supply residential property buildings with electricity and gas. The current agreements are call-off contracts from a LASER Framework, an organisation part of Kent County Council Commercial Services which procures energy for over 160 local authorities and other public funded bodies. The existing framework agreement ends on 30 September 2020 and the Council now seeks dispensation to put in place buying arrangements for a 4½ year supply period starting on 1 October 2020 through to 31 March 2025. The Council had intended to enter into the contract by 1st June 2020, but I am told by Kalpana Saini that this has been pushed back until 1st July 2020, to enable forward purchasing in the run up to commencement of the new supply period.

7. The grounds set out the reasons for entering into this framework agreement as follows *“The framework is beneficial as it enables public sector authorities to, in effect, work together and collectively buy energy on the wholesale market through a Central Purchasing Body, such as LASER, that aggregates and purchases gas and electricity commodities when market conditions are favourable. The ability to purchase ‘chunks’ of energy over longer periods of time avoids the high-risk strategy of single day purchasing typically associated with fixed term, fixed price tendering”*.

Findings

8. The Law applicable to this application is to be found at s20ZA of the Act. I have borne in mind the Supreme Court decision in Daejan and Benson although no objection has been raised, nor has there been any allegation of prejudice to the leaseholders. The purchase of gas and electricity under the proposed arrangements are common amongst the London Boroughs and other public bodies and have been in place for some years. Indeed, this application relates to a continuance of an arrangement which is due to end on 30th September 2020. It is difficult, if not impossible, to envisage an individual leaseholder being able to obtain alternative costings for the supply of these utilities in the circumstances of this application, where some 160 local authorities and public bodies use this arrangement for the supply of gas and electricity. Furthermore, as recorded at paragraph 7 above the buying power of the arrangement is beneficial to the leaseholders and to the Council.
9. As indicated above no leaseholder has objected to the application or raised issues of prejudice if dispensation is granted. I do not consider, in the light of all that is said within the grounds for the application and the witness statements that any prejudice will be caused to leaseholder by granting the dispensation sought. My decision to grant dispensation does not preclude any leaseholder from challenging the costs of same under the provisions of section 19 and 27A of the Act.

Andrew Dutton

Name: Tribunal Judge
Dutton

Date: 14th May 2020

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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