



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

Case reference : **LON/00BG/LDC/2020/0026**

Property : **Various units in buildings in London E3 and E14 as listed in Appendix 1 to the application**

Applicant : **Poplar Housing and Regeneration Community Association Limited**

Respondents : **The leaseholders of the Property as per the application**

Type of application : **To dispense with the requirement to consult leaseholders in relation to a qualifying long-term agreement**

Tribunal member : **Judge P Korn**

Date of decision : **16th March 2020**

DECISION

Decision of the tribunal

The tribunal dispenses with the consultation requirements in respect of the qualifying long-term agreements which are the subject of this application to the extent that they have not already been complied with.

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 qualifying long-term agreements (“**QLTAs**”), to the extent that those requirements have not already been complied with. The agreements have not yet been entered into.
2. The Property comprises various purpose-built blocks of flats in the E3 and E14 postcode areas of London.
3. The application concerns (a) a QLTA for the supply of gas to the communal boilers and (b) a QLTA for the supply of electricity to the Property.
4. The Applicant is the landlord under the long leases of the individual flats within the Property.

Paper determination

5. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant’s case

6. The Applicant proposes to enter into a QLTA for the supply of gas to the communal boilers with effect from 30th March 2020, which will affect about 200 variable service charge payers. It also proposes to enter into a QLTA for the supply of electricity to the Property with effect from 31st March 2020, which will affect about 2,500 to 3,000 variable service charge payers.
7. By entering into the proposed type of contract the Applicant will be able to source more competitive rates than if it was a ‘pay-as-you-go’ customer. Early indications are that ‘pay-as-you-go’ gas and electricity prices are on average double the price that the Applicant currently pays

for its gas and electricity supply under contracts similar to the ones currently under consideration.

8. The Applicant is looking to enter into traditional fixed term contracts as it believes that this type of contract offers good value for money. Market conditions are volatile, and entering into this type of contract will offer residents some price stability over the contract term and to take advantage of economies of scale through the Applicant's large purchasing power.
9. The intention is to use the Energy Purchasing Framework created by Genesis Housing Association and the Monarch Partnership. By using this framework the Applicant believes that it will be able to source utility services at better prices and will avoid paying brokerage fees or any other fees to third parties. This purchasing framework is in line with EU regulations. To ensure that it has a good understanding of overall market conditions the Applicant will simultaneously be tendering for different lengths of contract.
10. The problem with following the section 20 consultation regulations is that bids are requested and contracts signed within a 24 hour period. It is impossible for the time periods laid down in the consultation requirements to be followed as the price cannot be held for the length of the period necessary to carry out the consultation.
11. As to the consultation which has been carried out, on 25th November 2019 the Applicant served a Notice of Intention on leaseholders offering a 30 day consultation period. The Applicant has notified all leaseholders of its intention to apply for dispensation from the remainder of the consultation requirements. It has published, or will publish, an article in the residents' newsletter explaining why it is unable to consult on prices before entering into the contracts. After terms have been agreed, the Applicant will notify leaseholders of the chosen supplier, the contract terms and prices and the reasons for selecting that supplier and that contract duration.

Responses from the Respondents

12. One leaseholder, Mr Saleh Ahmed, has completed the tribunal's standard form stating that he opposes the application for dispensation. He has not, though, either requested an oral hearing or explained the basis for his objection.
13. In addition, by a letter dated 7th December 2019 a company called Sherman House Management Company wrote to the Applicant stating that it "represents the interest of 85% of the Leaseholders in the property" and that "the Leaseholders" disagree with the Applicant's intention. It adds that the majority of leaseholders have served the

statutory notice on the Applicant “for the purpose of purchasing the enfranchisement” and that the Applicant’s “intentions in this matter would be un-necessary”. In a follow-up letter dated 2nd March 2020 it then repeated its objection by stating that “the majority of Leaseholders are strenuously against the [application for dispensation], and would ask for a reconsideration”.

Witness statement from Abdul Bhuta

14. Mr Abdul Bhuta, a Facilities Manager employed by the Applicant, has given a written witness statement. In addition to summarising the grounds for the application and certain other points he addresses the written representations made by Sherman House Management Company.
15. Mr Bhuta notes that Sherman House Management Company has not provided a statement of case. As regards the enfranchisement discussions, he states that no agreement has been reached and that – even if they are successful – the acquiring entity or entities will acquire the right to appoint their own suppliers at that stage. However, if the enfranchisement does not go ahead the leaseholders will be able to take advantage of the lower gas and electricity prices that the Applicant hopes to negotiate.

The relevant legal provisions

16. 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*”.
17. 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*”.
18. The specific consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.

Tribunal’s decision

19. The Applicant accepts that these agreements would both amount to QLTAs, and based on the information provided I am satisfied that this is the case.

20. Only one objection has been received from a specific leaseholder. No explanation has been given for the objection and therefore I am unable to place any weight on the objection.
21. As noted above, an objection has also come – or appears to have come – from Sherman House Management Company. The apparent objection is not on headed notepaper, it does not give a company number or registered office (merely a “c/o” address) and there is only an electronic signature. This at the very least casts some doubt as to the authenticity of the claim that a company called Sherman House Management Company represents 85% of all leaseholders in the absence of any other evidence. In any event, the fact that the name of the company refers only to Sherman House would suggest that at most the company represents the leaseholders of Sherman House rather than those of other blocks.
22. The representations which purport to come from Sherman House Management Company also do not contain any statement of case as to why the tribunal should not grant dispensation. They contain a reason for the request to the Applicant not to pursue the application for dispensation, but they do not contain any meaningful analysis as to why the tribunal should refuse dispensation in circumstances where the Applicant has decided to proceed with the application. This is particularly surprising in the light of the claim that YVA Solicitors have been instructed in relation to the enfranchisement claim, as one would have thought that if this was a serious objection on serious grounds the tribunal would have received formal submissions from YVA Solicitors themselves.
23. In the circumstances, I do not consider that it is appropriate to place much weight on the apparent objection from Sherman House Management Company either.
24. The Applicant has explained the rationale for its wish to enter into these contracts and the reasons why it cannot do so whilst fully complying with the consultation regulations. In particular, the fact that bids are requested and contracts signed within a 24 hour period makes it impossible to enter into such contracts whilst also fully complying with the consultation requirements. It is quite common for social landlords to seek to enter into this type of contract when market conditions are favourable, and the potential advantages of doing so are clear.
25. The Applicant has complied with the tribunal’s directions and has consulted with leaseholders to the extent practical. There is no proper evidence before me that any of the Respondents has been prejudiced by the failure to consult fully.

26. Therefore, for the above reasons, I am satisfied that it is reasonable to dispense with the formal consultation requirements in respect of the QLTAs which are the subject of this application to the extent that those requirements have not already been complied with.
27. **For the avoidance of doubt, this determination is confined to the issue of consultation prior to entering into the QLTAs and does not constitute a decision on the reasonableness of any future gas or electricity charges.**

Name: Judge P Korn

Date: 16th March 2020

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.