



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

- Case Reference** : CHI/00HH/LDC/2022/0055
- Property** : Various properties within the LiveWest portfolio
(Lead case Flat 10 Abbey Court, Abbey Road, Torquay, Devon TQ2 5NE)
- Applicant** : LiveWest Homes Limited
- Representative** : -
- Respondents** : Mr William Forde
Mr Mohammed Mora
Mr Richard Davoll
- Representative** : -
- Type of Application** : To dispense with the requirement to consult lessees about a long term qualifying agreement.
- Tribunal Member** : Mr W H Gater FRICS MCI Arb
- Date of Hearing** : 13 July 2022
- Date of Decision** : 22 July 2022

Corrected under Rule 50 8 August 2022

DECISION

i) The Tribunal issued its decision in this matter on 22 July 2022. On 22 July 2022 Mr William Forde drew attention to a typographical error in the decision at paragraph 47.

ii) On 27 July 2022 the Applicant drew attention to typographical errors in the type of application in the front sheet, the spelling of Mr Jeffrey's name in paragraph 22 and the date referred to in paragraph 8.

ii) The Tribunal offers apologies for these errors and under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 makes the corrections and shows them underlined below.

iii) The Tribunal confirms that none of the corrections are material or affect the decision in any way.

The Application

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The application was made on 1 June 2022 and relates to 10,304 properties that are managed by the Applicant which receive "either landlord's communal electricity, lighting, or district heating within the LiveWest geographical operating area. There is a mixture of flats, houses, and bungalows"
3. The Applicant explains that this application concerns a qualifying long-term agreement which has yet to be entered into. Further it states that the agreement that "LiveWest Homes Limited wishes to enter into [is] for the bulk purchasing of energy on the wholesale energy market. Currently, we purchase the energy on an annual basis and can be at risk of losing out on obtaining the lowest tariffs available via long term agreements. LiveWest Homes Limited will use the services of Inspired Energy PLC to procure the energy supplies..... We intend to enter the energy market as soon as possible if we receive the dispensation with a view to signing a qualifying long term agreement with a supplier(s) to take effect as soon as possible."
4. Further detailed representations regarding the reasons for the urgency of the application and why dispensation is sought, together with additional information regarding the consultation process are set out in pages 5 and 8 of the application form.
5. On 10 June 2022 the Tribunal issued directions for the determination of the matter. Respondents were required by 24 June 2022 to complete and return a form detailing reasons for any objection. Those who did not respond, or who agreed to the application were to be removed as

Respondents. If objections were received the matter was to be set down for a hearing scheduled for 28 June 2022.

6. Those directions required the Applicant, on receipt of the directions, to send them, together with a copy of the application, to each Respondent. On 16 June 2022 the Applicant confirmed to the Tribunal that this had been done.
7. In preparing for the hearing the Tribunal was made aware that concerns had been expressed by a Respondent and the Applicant that the reply form erroneously referred to 8 July 2022 as the last date for responses, despite the directions stating that this date is 24 June 2022. The particular concern was that other Respondents may believe that they had until 8 July 2022 to respond.
8. The Tribunal considered the matter and issued further directions on 28 June 2022 rescheduling the hearing to 13 July 2022.
9. The Tribunal also required the Applicant to send a copy of the further directions to all leaseholders.
10. On 28 June 2022 the Applicant made a case management application to vary the further directions. The grounds were that, given the very large number of properties involved, the additional requirement to send the further directions to each leaseholder would add significantly to costs and may result in further confusion for residents. Alternative arrangements were proposed whereby the documents would be uploaded to the LiveWest website with all previous documentation and that hardcopies of the directions would be forwarded on request.
11. The Tribunal considered the latest case management application. It had regard to the Overriding Objective under Tribunal Procedure Rules. In particular, that it should deal with cases proportionately and have regard to anticipated costs. The Tribunal decided that none of the leaseholders will be prejudiced by the proposed alteration which ensured that the latest of responses could be received prior to the hearing. Accordingly, it granted the application.

The Hearing

12. At the opening of the hearing, it was noted that there were three Respondents who had submitted an objection to the proposal as listed above. Leaseholders who did not respond or indicated agreement were removed as Respondents.
13. Mr Richard Jeffreys, Head of Income and Service Charges at LiveWest was in attendance, representing the Applicants.
14. Mr Mora had indicated that he would attend, but after delaying the proceedings for a short time to allow for late arrivals it was recorded by the Tribunal that there were no Respondents in attendance.

Evidence

15. Applicant: LiveWest: Mr Jeffreys.
16. The Tribunal had received the application form which contains detailed information on the rationale for the application and the extent of consultation already carried out with leaseholders.
17. In particular, the Applicants describe consultation arrangements as follows: -
18. “We have kept our residents and leaseholders informed via consultation using letters (copy attached), information bulletins and posting updated information on the LiveWest website. We have also carried out consultation by speaking with tenants and leaseholders.
19. LiveWest Homes Limited also plans to keep residents and leaseholders involved and informed throughout this process by using the methods outlined above and will keep them informed of the progress it is making with the energy procurement exercise if dispensation is granted and are in a position to begin the procurement process.
20. A copy of this application has also been posted on the LiveWest website for perusal by interested parties. Tenants and leaseholders without access to a computer can also request a hard copy of this application in various formats.
21. “Given the number of residents concerned (10,304) and the cost of postage, we intend to keep the number of mailings to residents to a minimum to ensure that costs are kept to a minimum.”
22. At the hearing Mr Jeffreys stated that energy for this many properties is a commercial matter and LiveWest had engaged energy consultants Inspired Energy to advise them and obtain the best deal. The particular consultant, Mr Kevin Jackson, Head of Social Value in the Regulated Services Team at Inspired Energy, is very experienced having been in practice since 1989.
23. The majority of the energy requirement is for communal electricity and lighting. There are a small number of properties which have district heating.
24. The current contract expires on 30 September 2022 and LiveWest is acutely aware that the energy prices are very volatile.
25. The Applicant believes that by procuring energy for communal use via the commodities market in this way, they will be able to minimise the risk of significant upward price movements impacting on tenants and

leaseholders. This will be reflected in the level of service charge they are required to pay.

26. In addition, by procuring energy for tenants and leaseholders in this way, tenants also benefit from a reduced suppliers risk premium, reduced suppliers margins and lower underlying energy costs.
27. Consultants engaged will “hedge“ prices by purchasing energy in tranches. Mr Jeffreys states that this is in the best interests of the leaseholders and his approach is supported by consultants.
28. If the application is approved the consultants will be able to start the process immediately with a view to securing a 3- 5 year contract in time for 1 October 2022. This would be a Long term qualifying agreement for the purpose of the Act.
29. In summing up, Mr Jeffreys stated that the proposal was made with the best interests of the tenants in mind and far from being prejudicial to them, it would have the opposite effect.
30. Respondents
31. Mr Forde made written submissions which the Tribunal has considered.
32. In summary he considers that the proposal will be prejudicial to him and it significantly increases the quantity of electricity and utility cost that he will be liable for. There is no consideration for the efficiency of technology in common areas. For example, indoor communal lights at his property stay on 24 hours a day due to faulty configuration.
33. He states that it is a poor decision to lock in a deal when costs are artificially high and that vulnerable and low income tenants will be affected.
34. Mr Forde objected to a determination on the papers and requested a hearing. He states that he has not had the proposal explained to him and did not receive the details until 22 June 2022. He expresses concern that others may not have been able to access the details or to understand the implications.
35. Mr Mora returned the reply form objecting to the application and to the matter being determined on the papers. He did not make any further submissions and did not attend the hearing.
36. Mr Darroll made written submissions. In summary, he considers that there is more to the scope of the application and believes “major works” implies works to the properties not energy procurement agreements. He objects to qualifying agreements and works being treated as the same thing.

37. Mr Darroll objects to Mr Jeffreys predating his letter by five days and expressed concern whether residents had been misled about the date by which they should reply. Lack of consultation on major works has been a fact of life for some time.
38. In the absence of any of the three respondents the Tribunal questioned Mr Jeffreys in relation to the submissions of Mr Darroll and Mr Forde.
39. He confirmed that the application did not relate to major works and only concerned a long term qualifying agreement for the supply of communal energy.
40. With regard to the allegation of post dated letters this was explained by the fact that LiveWest use a mailing agency to deal with the 10,300 properties. The process at the agency appears to have taken up those additional four or five days.
41. In respect of Mr Forde's comment about faulty communal light timers Mr Jeffreys said that in this particular case the fault had been reported and on the Monday prior to the hearing the contractor confirmed that this was being attended to.

Determination

42. The Tribunal found the following facts:
 - a) The Applicant has carried out significant consultation with the tenants and made information available.
 - b) Copies of the application and directions were sent to each of the potential respondents.
 - c) The Applicant has engaged a firm of consultants to obtain quotes for energy supplies with a view to achieving the best price possible.

The Law

43. The relevant section of the Act reads as follows:
44. 20ZA Dispensation from Consultation requirements: "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 works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."
45. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In *Tanfield*

on Service Charges and Management 5th Edition the author comments:-

46. “In that case the Supreme Court held that the main, indeed normally, the sole question for the Appropriate Tribunal when considering how to exercise its jurisdiction in accordance with s.20ZA(1) is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements. The financial consequences for the landlord of not granting a dispensation is not a relevant factor. The Appropriate Tribunal may grant dispensation on such conditions as it thinks fit, provided that any such conditions are appropriate in their nature and their effect.”
47. The Tribunal notes the written representations from Mr Forde and Mr Darroll and the objection by Mr Mora. Whilst these views are clearly genuinely held it appears that the issues raised are more appropriate to a Section 27 application mentioned at 53 below.
48. This application relates to a prospective application for dispensation of the consultation requirements in connection with a long term qualifying agreement to be agreed in 2022, for energy only and does not include any other works such as repairs or maintenance. The consultation requirements for QLTAs are set out in schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003.
49. For the purposes of this application, the responses submitted do not demonstrate that the tenants/leaseholders would be subject to relevant prejudice by the grant of dispensation.
50. The Tribunal also considered the issue of the apparent error in reply dates in the directions and finds that subsequent arrangements including holding the hearing at a later date have ensured that a reasonable opportunity for responses and attendance has been given.
51. The Tribunal is satisfied from the facts found that the Applicant cannot complete the consultation process because of the nature of the energy supply market and that the steps taken by the Applicant will minimise the risk of prejudice to the Leaseholders. It is clear from the evidence that the Applicant has listened to the views of the leaseholders whilst seeking to obtain energy supplies in the best interests of the residents.
52. **The Tribunal decides to dispense with the requirements of the consultation process for Qualifying Long Term Agreements because the leaseholders would suffer no relevant prejudice.**
53. The Tribunal’s decision is confined to the dispensation from the consultation requirements in respect of the qualifying long term agreement. The Tribunal has made no determination on whether the costs of the energy supply will be reasonable or payable. If a

leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

54. The Tribunal will send a copy of the decision to the three respondents. The Tribunal notes that the Applicant has undertaken to inform the other tenants/leaseholders of this decision by way of the dedicated website or other forms of communication.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.