



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

Case Reference HMCTS Code	:	CAM/22UC/LDC/2021/0003 P:PAPERREMOTE
Property	:	Various blocks, estates and street properties in or around Essex
Applicant	:	Estuary Housing Association Limited
Respondents	:	The long residential leaseholders subject to communal electricity supplies
Type of Application	:	For dispensation of the consultation requirements under section 20ZA
Tribunal Member	:	Judge Wayte
Date of Decision	:	2 March 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. A face-to-face hearing was not held because all issues could be determined in a remote hearing on paper and no hearing was requested. The documents that I was referred to are in a bundle of 84 pages, the contents of which I have noted. The order made is described below.

The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements as set out in Schedule 2 to the

Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”) in relation to the placing of energy supply contracts for communal electricity supplies to the relevant properties.

The application

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements in respect of a qualifying long-term agreement for the supply of electricity 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 listed in the application.
2. The respondents are the leaseholders of those properties who will be responsible for part of the cost of those supplies as part of their service charge liability. This application has no relevance to individual electricity supply on a domestic basis: the leaseholders will be free to continue to obtain their personal electricity from the supplier of their choice.
3. The issue in this case is only whether the consultation requirements of section 20 of the 1985 Act and the Regulations should be dispensed with. If there is any issue as to the cost of the supply that may be the subject of a separate application under section 27A of the Landlord and Tenant Act 1985.

The background

4. The application was received in January 2021 via our London regional office. Directions were given on 12 January 2021. Those directions required the applicant to write to the respondents informing them of the application and the timetable for any objections. A website address was to be provided for a copy of the application, directions and any other relevant documents. The applicant’s bundle contains a copy letter dated 29 January 2021 containing the required information, including confirmation of the process for taking part in the proceedings. The tribunal has not received any reply forms from leaseholders. A number of responses made to the applicant on its website were included in the hearing bundle as detailed below.
5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers on 2 March 2021.

6. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act and the Regulations.

The Applicant's case

7. The statement of case explained that the applicant will carry out a process with its energy consultant, Cost Advice Energy Specialists, to identify which utility provider(s) will provide best value bulk electricity supplies to the landlord and then enter into an agreement with the provider(s) at the best price available at the time.
8. Before entering such an agreement, the applicant would ordinarily have to consult with the owners of its residential properties. An initial Notice of Intention has been served on lessees in respect of the new agreement but dispensation is sought from other consultation requirements including provision of the name of the provider, estimated cost of supply and length of the agreement as the applicant claims that the tender process for energy procurement is not compatible with the timetable for statutory consultation, particularly given that a new contract is being sought to start on 1 April 2021 (although the latest information indicates that the current contract expires in March 2022).
9. If the applicant is unable to proceed with the agreement they state that the cost of electricity, which is paid by the leaseholders as part of their service charge, will rise. In particular, the applicant states that the out-of-contract price of electricity is anywhere between 50% and 100% higher than the price that may be obtained through the use of agreements. For this reason, the applicant states that there is no prejudice to the leaseholders.

The Respondents' position

10. The directions provided for the respondents to complete the reply form attached to the directions and send it to the tribunal and the Applicant if they wished to object to the application. No forms have been received by the tribunal.
11. The bundle contained three responses received by the applicant on its website. Two of these queried whether the new contract would affect the lessee's choice of domestic electricity and one asked a question about charges and the possibility of solar power. In the circumstances the tribunal concluded that the application for dispensation was unopposed.

The Tribunal's decision

12. The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the

consultation requirements in relation to the new contract for the supply of communal electricity outlined above.

Reasons for the Tribunal's decision

13. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act “*if satisfied that it is reasonable to dispense with the requirements*”.
14. The application was not opposed by the leaseholders. The tribunal is further satisfied that there is no prejudice to them by enabling the applicant to work with its brokers to obtain the best market price and avoid any practical problems caused by the consultation requirements under the Regulations.

Application under s.20C Landlord and Tenant Act 1985

15. There was no application for any order under section 20C before the tribunal.

Name: Judge Wayte

Date: 2 March 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).