



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

**Case reference** : **LON/00AU/LDC/2022/0169P**

**Property** : **250 City Road, London EC1V 2AB**

**Applicant** : **BH (City Forum) Limited**

**Representative** : **Emma Salvatore of Trowers & Hamlins LLP**

**Respondents** : **The residential leaseholders of the Property**

**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**

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**DECISION**

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**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 agreement (“**QLTA**”) which is 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 a QLTA.
2. The Property is a luxury development of apartments and penthouses set on a triangular site between Angel and Old Street (“**the Development**”). The Development is a mixed-use development with 954 residential units, a new 190-bedroom hotel and 75,000 square feet of commercial space. Construction of the Development began in 2015 and the first phase was completed in 2021. The Development is scheduled for completion in October 2023. As at the date of the application, around 437 apartments have been let.
3. The Applicant intends to enter into a Connection Works and Heat Supply Agreement for a term of 20 years (“**the Heat Supply Agreement**”) with The Mayor and Burgesses of the London Borough of Islington (“**the Council**”) for the supply of heat and hot water to the Development. It is intended that the heat supply costs incurred by the Applicant under the Heat Supply Agreement will be passed on, inter alia, to the leaseholders of the residential apartments as part of their service charge. The Applicant accepts that the Heat Supply Agreement is a QLTA for the purposes of the statutory consultation requirements under section 20 of the 1985 Act.

## **Applicant’s case**

4. The Applicant states that it is impossible for it to comply with the substantive requirements of the statutory consultation requirements as the Council is the only possible supplier with whom an agreement could be made under which heat and hot water could be obtained from the District Heating Network. This is because of the terms of an agreement dated 22 August 2014 made between the Applicant, the Greater London Authority (“**GLA**”) and the Council under section 106 of the Town and Country Planning Act 1990 (“**the section 106 Agreement**”).
5. The Applicant has provided a copy of the section 106 Agreement. It contains an obligation on the Applicant to connect into the Council’s ‘Bunhill’ district heating network prior to the occupation of the 634<sup>th</sup> dwelling in the Development unless the Applicant can demonstrate to

the Council's satisfaction that the Council's proposed connection costs, heat tariff and charges are not reasonable or not economically viable. The 634<sup>th</sup> dwelling is due to be completed by February 2023.

6. Connection to the Bunhill district heating network requires the installation of a heat exchanger in the plant to allow the Bunhill heat network to supply heat to the site, with the existing boilers providing additional capacity for peak loads. If the Applicant does not connect to the Bunhill district heating network, then under the terms of the section 106 Agreement it must instead install a Combined Heat and Power engine and Photovoltaic panels prior to the occupation of the 900<sup>th</sup> dwelling in the Development. If the Applicant were to pursue the Combined Heat and Power engine and Photovoltaic panels option, it would need to install a Combined Heat and Power engine within the existing plant room to generate the bulk of the Development's heat requirements, with the existing boilers providing assistance for peak loads. To satisfy the section 106 Agreement obligation it would also be required to install 50–53 kWp of Photovoltaic panels on blocks 6 and 7 of the Development.
7. As part of the design process, the Applicant states that it has carefully considered what system should be installed for the provision of heat and hot water for the Development. It has retained FairHeat, an independent specialist energy consultancy, and FairHeat's report entitled "Energy Strategy Options Assessment" dated 6 April 2022 forms part of the bundle. FairHeat has considered whether the Applicant should connect to the Council's Bunhill district heating network or install a Combined Heat and Power engine. The FairHeat report strongly recommends adopting the Bunhill connection. It concludes that the benefits would be lower running costs for residents, increased protection from fuel price volatility, lower carbon intensity of heat and future flexibility for further carbon reductions without any onsite interventions, and reduced onsite combustion thereby improving local air quality.
8. The Applicant also comments that the Council has recently issued its 2030 carbon zero strategy and has confirmed that it will look at how the Bunhill district heating network can be upgraded to become a zero emissions network. Connecting to the Bunhill district heating network now will in the Applicant's view future-proof the Development for potential Council policy changes, which should reduce the prospect of future "net zero" costs.
9. Given its expert's strong recommendation that it adopt the Bunhill connection, the Applicant cannot meaningfully comply with the statutory consultation requirements as the Council is the only entity that can supply heat and hot water through the Bunhill connection. In all the circumstances, the Applicant submits that it is reasonable to grant dispensation.

## **Responses from the Respondents**

10. No leaseholders have written to the tribunal expressing any objections to the application for dispensation.

## **The relevant legal provisions**

11. 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*”.
12. 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**

13. 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.
14. In this case, there is persuasive evidence to indicate that there is a significant potential benefit to entering into this QLTA and that it is not possible to do so whilst also complying with the statutory consultation requirements. The Applicant has provided a copy of the Section 106 Agreement and of its expert’s report, amongst other items, and the Applicant’s uncontested evidence is (a) that adopting the Bunhill connection would be greatly beneficial for all the reasons set out in paragraph 7 above and (b) that the Council is the only entity that can supply heat and hot water through the Bunhill connection. Importantly, there are also no objections before us from leaseholders. It also seems to be the case that the Applicant would have difficulty demonstrating to the Council’s satisfaction that the Council’s own proposed connection costs, heat tariff and charges are not reasonable or not economically viable.
15. 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 this contract, the impossibility of doing so whilst complying in a meaningful manner with the statutory consultation requirements, and the lack of objections from leaseholders.

16. 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.
17. Accordingly, we grant unconditional dispensation from compliance with the statutory consultation requirements.
18. 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**

19. 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.