



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

<b>Case Reference</b>	<b>:</b>	<b>LON/00AB/LDC/2022/0161</b>
<b>Property</b>	<b>:</b>	<b>Various residential leasehold properties in the London Borough of Barking and Dagenham</b>
<b>Applicant</b>	<b>:</b>	<b>London Borough of Barking and Dagenham</b>
<b>Respondent</b>	<b>:</b>	<b>Long residential leaseholders in the Borough subject to communal electricity and gas supplies</b>
<b>Type of Application</b>	<b>:</b>	<b>Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA</b>
<b>Tribunal Member</b>	<b>:</b>	<b>Judge Professor R Percival</b>
<b>Venue</b>	<b>:</b>	<b>Remote paper determination</b>
<b>Date of Decision</b>	<b>:</b>	<b>23 January 2023</b>

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**DECISION**

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### **Decision of the tribunal**

- (1) The Tribunal, pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), grants unconditional dispensation from the consultation requirements in respect of the subject of the application relating to the arrangements for the purchase of energy supplies.

### **Procedural**

1. The landlord submitted an application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the regulations thereunder, dated 24 August 2022.
2. The Tribunal gave directions on 6 October 2022. The directions required the Applicant to write to each of the leaseholders, any sub-lessees and recognised residents’ associations so as to:
  - (a) Inform them of the application;
  - (b) Advise them that a copy of the application (with personal details deleted), statement of case, supporting documents and a copy of these directions would be available on the applicant’s website, advising them of the URL, and notifying them that any response to the application should be made by 17 November 2022;
  - (c) Inform the leaseholders that if they wished to receive a printed copy of the application and the directions they should write to the applicants, who will then send printed copies; and
  - (d) Advise the leaseholders that as the application progresses additional documents would be added to the website, including the final decision of the tribunal, stating clearly that the final decision is likely to be uploaded on or after 26 January 2023
3. The directions required the Applicant to inform the Tribunal when this was done. The Applicant did so 26 October 2022.
4. The directions made provision for those leaseholders who opposed the application to complete a reply form and email it to the Tribunal and to the Applicant (and to provide to the Applicant a statement in response and any documents relied upon) by 17 November 2022.
5. No responses have been received by the Tribunal.

### **The subject matter of the application**

6. The Applicant proposes to enter into a new agreement for the supply of electricity to the landlord's lighting, communal areas, staircase lighting and lifts serving residential leaseholders in the Borough of Barking and Dagenham and gas to central boiler rooms on estates, communal block boilers and communal supplies serving residential leaseholders, as set out in the statement of case in the application (which is, as stated, available to residents on the Applicant's website).
7. The form of the new agreement is a framework agreement with LASER. LASER is a company owned by a local authority which is used by a large number of public sector bodies as a broker for energy supply contracts. The Tribunal is aware that a number of London boroughs use the same framework agreement structure, and have been granted dispensations under section 20ZA as a result.
8. The Applicant argues that utilising the framework agreement provides a method which allows public bodies to work together to collectively buy energy on the wholesale market in the most favourable way, given the well known volatility of that market. The advantage claimed is not just in terms of the average cost achievable (including by means of economies of scale), but also in terms of stability over time, by a combination of longer and shorter term contracts with energy suppliers.
9. The Applicant states that it not practicable to consult under section 20 of the 1985 Act in respect of each and every purchasing decision taken by LASER for obvious reasons. Similarly, the Applicant cannot adhere to the requirements of paragraphs 4 to 8 of Schedule 2 to the Service Charges (Consultation etc)(England) Regulations 2003 (made under sections 20 and 20ZA), because the Applicant cannot prepare a proposal under those provisions where it is inherently reliant on notices already given by LASER.
10. The Applicant has, however, prepared a notice of intention under the regulations.

### **Determination**

11. The Tribunal is concerned solely with an application under section 20ZA of the 1985 Act to dispense with the consultation requirements under section 20 of the same Act.
12. The Applicant originally sent a defective application, consisting of only every other page. At the request of the Tribunal office, a complete application was substituted. It was unfortunate that the defective application was then duplicated in the bundle for determination, a copy

of which was then (in compliance with the directions) uploaded to the website page to which the leaseholders were directed. The page also carried a link to the properly completed application form, however (which must have predated the bundle), so I do not think it likely that any of the leaseholders can properly be said to have lost the opportunity to properly consider the application as a result.

13. In the first place, I agree with the Applicant's contention that the tender process developed by public bodies for energy procurement is incompatible with elements of the consultation process. The purpose of the consultation requirements is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854. It is clear that the purchasing of energy supplies is not inherently inappropriate; and the Applicant provides a strong argument for the efficiency of the system it proposes to use, such that it would be the best way to protect tenants paying more for energy supplies than would be appropriate. It would be disadvantageous if tenants were to miss out on the cost advantages of this means of procurement because a local authority could not take part and also comply with the consultation requirements. Dispensation is an appropriate way of preventing this outcome. So for this reason alone, a dispensation is warranted.
14. Secondly, no response been received from any of the leaseholders, or, indeed, from sub-lessees. It is therefore clear that the leaseholders have not sought to claim any prejudice as a result of the consultation requirements not having been satisfied. Where that is the case, the Tribunal must allow the application in any event: *Daejan*.

### **Rights of appeal**

15. 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 London regional office.
16. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
17. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Name:** Judge Prof Richard Percival      **Date:** 23 January 2023

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

## **Section 20ZA**

- (1) Where an application is made to a leasehold valuation 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.
- (2) In section 20 and this section—
  - “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.