



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

Case reference : **LON/00AG/LDC/2022/0190**

Applicant : **The London Borough of Camden**

Representative : **Mr Upton of Counsel**

Respondents : **Long Residential Leaseholders in
the Borough subject to Communal
Electricity and Gas Supplies**

Representative : **N/A**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal member : **Tribunal Judge I Mohabir
Mr K Ridgeway MRICS**

Date of decision : **17 February 2023**

DECISION

Introduction

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for *prospective* dispensation with the consultation requirements in respect of its intention to enter into qualifying long term agreements (“QLTAs”) for:
 - (1) The supply of electricity to blocks and estates and street properties for landlords’ lighting, staircase lighting, lifts, estate lighting, boiler rooms and communal services such as door entry systems and fire alarms serving the Applicant’s residential leasehold properties; and
 - (2) The supply of gas to the central boiler room on estates, communal block boilers, communal supplies on smaller blocks and some flats directly.
2. In 2011 the Tribunal granted the Applicant dispensation under section 20ZA of the Act for the procurement under a QLTA of gas and electricity on a borough wide basis through a public sector buying organization called LASER. This agreement was for a term of 4 years. LASER is a wholly owned subsidiary of Kent County Council and is comprised of a consortium of other public sector organisations.
3. This agreement ended in 2020 and the Applicant subsequently obtained a further dispensation from the Tribunal to enter into another similar QLTA with LASER to purchase energy. That contract ends of 30 September 2024 and the Applicant intends to enter into a further QLTA agreement with LASER on 1 October 2024 for a term of 4 years.
4. The purpose is to enable the Applicant to ensure the best value can be obtained from purchasing energy on the wholesale market, which has to be done up to 2 years before the contract supply date.
5. In effect, under the QLTA, LASER submits tenders on behalf of the Applicant and other members of the consortium from various energy suppliers for the provision of energy from 1 October 2024. These are classed as First and Secondary suppliers and potentially enables the Applicant to chose the most appropriate supplier from time to time to obtain the most cost effective way of procuring energy.
6. In addition, it is also possible for the Applicant to enter into a fixed term fixed price contract in the event that market energy prices are low.
7. Once the Applicant enters into the QLTA, LASER instructs the supplier when to purchase energy on forward markets and short-term markets for Camden and other participating organisations in advance of the October 2024 supply date or to better manage risk or take advantage of downward price movements also during the supply period. This becomes the “energy commodity” price that Camden pays within invoices for gas or electricity in October 2024 and subsequent years, which is the weighted average of the forward and short-term purchases.

8. LASER charges a fee for framework management and providing a buying and risk management service, which is recovered through the supplier's invoice. The Applicant contends that this fee is a very small percentage of the total cost of the energy contract but is nevertheless comparable or lower priced than similar organisations offering the same or similar services. The energy commodity that is forward purchased, is purchased by the supplier on behalf of Camden, and is recovered by the supplier within the invoice, when it is actually supplied. This form of buying and risk management means that Camden does not have to pay for the energy commodity before it is supplied and is an effective way to manage risk and volatility.
9. The Applicant further contended that the effectiveness of the framework agreement methodology is derived from the ability of public sector authorities to, in effect, work together and collectively buy energy on the wholesale market through a Central Purchasing Body that aggregates and purchases gas and electricity commodities when market conditions are favourable. The ability to purchase 'chunks' of energy over longer periods of time avoids the high-risk strategy of single day purchasing typically associated with fixed price, fixed period tendering.
10. Only two observations in response to the Applicant's service of a notice of intention dated 4 November 2022 were received. The observation from Mr Hussain (Flat 3, Burnham, Fellow Road, NW3) supports the proposal whereas the observation from Miss Origen (Flat 54, Langbourne Mansions, Langbourne Avenue, N6) appears to be neutral.
11. By an application dated 3 October 2022, the Applicant made this application for prospective dispensation.
12. On 12 October 2022 (amended on 19 October 2022), the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way.
13. None of the Respondents have objected to the application.

Relevant Law

14. This is set out in the Appendix annexed hereto.

Decision

15. The hearing took place on 30 January 2023. The Applicant was represented by Mr Upton of Counsel. The only Respondent who appeared was Miss Origen.
16. Miss Origen raised no specific objection to the application. She simply wanted the to make it known to the tribunal that the gas and electricity supply to her flat was separate. The Tribunal informed her that this is

not affected by the supply of energy the Applicant was seeking to obtain, which only affected the common parts of her building.

17. The Applicant's case is that it intended to serve a Notice of Intention in relation to the energy supply contracts. It will be able to comply with all of the requirements in paragraph 1 of Schedule 2 of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). However, it seeks dispensation from the requirement to invite nominations from the Respondents in relation to those contracts for 3 primary reasons.
18. Firstly, It would not be practical for leaseholders to be consulted on every occasion that LASER instructs the supplier to forward buy energy on Camden's behalf as by the time the consultation process has been concluded, the prices would no longer be available. Indeed, a requirement to consult would render participation with a buying organisation led procurement process unworkable.
19. Secondly, the prices received during the forward purchasing process would not necessarily be the same as the final contract price to Camden residents but rather components of the final price, which, as noted above, would be a product of the forward buying decisions taken in the run up to the contract start date. Other aspects of pricing are regulated by government, such as distribution and use of network costs, for example, pipes, wires and metering.
20. Thirdly, LASER may obtain prices on Camden's behalf from suppliers on a particular day by vetting and analysing prices over a period of time for different options of contractual terms. The price and contract options may be available for 24 – 48 hours but certainly for too short a period to provide a 30-day consultation period. It is also sometimes necessary to accept prices for additions to the contract during the contract period with sometimes as little as 2 hours' notice so therefore a 30 day consultation period would not be able to be provided.
21. As was correctly, submitted by the Applicant, a landlord may ask for a dispensation in advance: see ***Daejan Investments Ltd v Benson*** [2013] UKSC 14; [2013] 1 W.L.R. 854 per Lord Neuberger at [56]. It was also correctly submitted that the decision in ***Daejan*** was in respect of an application for *retrospective* dispensation following a failure to consult on qualifying works. Much of the analysis simply does not apply to a *prospective* application to dispense with the consultation requirements in relation to a QLTA, as is the case here.
22. The Tribunal further agreed with the Applicant's submission that the correct statutory test to apply was whether is it reasonable to dispense with the consultation requirements in relation to the proposed qualifying long term agreements.
23. The Tribunal was satisfied that the test was met the following reasons:

- (a) the reasons advanced by the Applicant as to why it was not practical for it to invite nominations from the Respondents were compelling.
- (b) the Respondents have been served with the application and the evidence in support and there has been no objection from any of them.
- (c) importantly, not to grant the application would almost certainly be unreasonable because it would potentially deprive the Respondents from the obvious financial savings for the procurement of energy on the wholesale market.

Name: Tribunal Judge I
Mohabir

Date: 17 February 2023

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).

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.