

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

**REF:**

**RE: SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985**

**AND RE: [ALL/VARIOUS] RESIDENTIAL LONG LEASEHOLDERS OF  
PROPERTIES OF WHICH THE LONDON BOROUGH OF CAMDEN ARE THE  
REVERSIONERS**

**B E T W E E N:**

**LONDON BOROUGH OF CAMDEN**

**Applicant**

**- and -**

**LONG RESIDENTIAL LEASEHOLDERS OF THE  
LONDON BOROUGH OF CAMDEN SUBJECT TO  
COMMUNAL ELECTRICITY AND GAS SUPPLIES**

**Respondents**

---

**STATEMENT OF CASE**

---

**Application**

1. This is an application by the London Borough of Camden ("Camden") for dispensation in relation to agreements that Camden intend to enter into for:

- 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 residential leasehold properties set out in Appendix 1.
- The supply of gas to the central boiler room on estates, communal block boilers and communal supplies on smaller blocks serving the residential leasehold properties set out in Appendix 2.

2. The Respondents to this application are the lessees within those properties set out in the confidential schedule provided to the Tribunal with this application. A sample lease in respect of Flat B, 22 Goldhurst Terrace, London, NW6 3HU is attached at Appendix 3.

### **Background**

3. In 2011, a Leaseholder Valuation Tribunal awarded Camden a dispensation exempting Camden from the statutory consultation procedures as defined under Section 20 of the Landlord and Tenant Act 1985 as amended in the Commonhold and Leaseholder Reform Act 2002 as defined in Section 20ZA with respect to the procurement of gas and electricity through a public sector buying organisation.
4. This enabled Camden to procure energy with a consortium of other public sector organisations through a public sector buying organisation (Central Purchasing Body) which entered into a 4 year framework agreement for gas and electricity with energy suppliers on behalf of consortium members. The appointed buying organisation was LASER, a wholly owned subsidiary of Kent County Council.
5. The existing framework agreement for the consortium ends in September 2020 and Camden now seeks a new dispensation to put in place timely buying arrangements for a 4 and a half year supply period starting in October 2020 through to April 2025. Camden intends to sign up to a new supply arrangement in Summer 2019 to enable forward purchasing in the run up to the new supply period.

### **The Framework Agreement**

6. Camden intends to enter into a new framework agreement with LASER and call-off energy supply contracts under that framework. LASER will be

responsible for running gas and electricity tenders for local authorities ready for delivery of energy supply by 2020 and the ability for Camden to take this supply from October 2020 and thereafter. LASER will appoint a single supplier framework for electricity and gas supplies. This framework is likely to be supplied in three lots as follows:

- Lot 1 - Electricity, primarily Half Hourly (HH) Metered and Unmetered supplies with Additional Services.
- Lot 2 - Electricity, primarily Non Half Hourly (NHH) Metered Small Sites and Unmetered with Additional Services.
- Lot 3 - Gas Daily Metered and Non-Daily Metered with Additional Services.

7. It is also possible that Camden will decide to enter into a fixed-term fixed price contract for electricity ("the FTFP Contract") called off from the Framework Agreement as it may be in Camden's and the leaseholders' interest to accept a fixed price contract if markets are particularly low.

8. LASER will be the contracting party in terms of the Framework Agreement and Camden would be a participating authority. Once Camden confirms that it will access supplies through the framework agreement and confirms its buying strategy, 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 2020 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 2020 and subsequent years, which is the weighted average of the forward and short term purchases made.

9. LASER charges a fee for framework management and providing a buying and risk management service, which is recovered through the supplier's invoice. 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.
10. The tender for the framework agreement for the suppliers complies with the Public Contract Regulations 2015 and will be awarded on a Most Economically Advantageous Basis, which includes a rigorous evaluation of non-energy commodity price elements, financial standing and terms and conditions.
11. The supplier appointed for Lot 1 and Lot 2 (electricity) may be the same, although not necessarily, however the supplier for Lot 3 (gas) will be different. The supplier under the FTFP Contract may also be different. Camden may therefore enter into four separate agreements with the successful suppliers.

### **The benefits of using a buying organisation**

12. Energy markets are complex and volatile, making them liable to sudden price fluctuations which are often linked to real or perceived threats to supply and demand that can significantly vary prices on a daily basis. A significant part of the energy price payable is market-related, a key variant and influencing factor is the wholesale commodity price. Due to its

volatility, the energy market cannot be index linked and true cost savings accrue directly from a lower absolute outlay. Given the nature of the energy market and influencing factors such as the increasing move to renewables, carbon reduction measures, taxation, reduction in generating capacity and increased reliance on energy imports, it is unlikely that the opportunity for any absolute cost reduction will occur on a consistent basis.

13. 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.

14. Using a public sector buying organisation such as LASER allows Camden to aggregate the Council's and residents' required energy consumption with the buying organisation's other customers to secure energy in a cost effective and risk managed way. It is cost effective because through aggregation at scale LASER can secure lower prices from the wholesale energy markets than Camden could secure on its own; the shape of energy is more attractive as contracts can be shaped differently than Camden can do on its own, for example street lights can be aggregated into the agreement, using energy at night-time when generators wish to sell and helping Suppliers balance their day and night time shape. It is risk managed as it enables LASER to forward buy energy from the Supplier in the run up to the supply start date, thus hedging against energy market

volatility at the contract start date and due to the aggregated volume, these purchases may be done more frequently than Camden could do on its own. Camden will then enter into a contract directly with the Supplier in respect of the forward purchased energy.

### **Consultation issues**

15. 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.

16. Furthermore 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 (pipes, wires and metering)

17. In relation to the FTFP Contract 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.

18. In such circumstances, the process of providing a detailed proposal, inviting observations and responding to those observations as required by paragraphs 4, 5(2) and 7 of Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") respectively, would render the whole energy supply contract process unworkable. Neither estimates received nor contract offers would be held for the length of time taken to consult.

19. Camden intends to enter into a new framework agreement with LASER in Summer 2019 in respect of which public notice will have already been served and therefore there is no need to serve a further public notice in respect of Camden's intended new contracts.

20. To allow for effective forward purchasing of energy volumes for the 1 October 2020 supply period, the Council wishes to instruct LASER to begin purchasing energy in Summer 2019. Camden therefore need dispensation in place as soon as possible.

### **QUALIFYING LONG TERM AGREEMENTS ("QLTAs")**

21. Section 20 of the Act provides that:

- (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 an appeal from) the appropriate tribunal."

22. Qualifying long term agreements are defined in section 20ZA as follows:

- (2) ... "qualifying long term agreement" means ... an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

23. Section 20 imposes a limit on the amount of service charges recoverable where the requirements have been neither complied with nor dispensed with.

24. Regulation 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") applies section 20 to qualifying long term agreements (QLTAs) if:

- (1) ..... relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100."

25. Regulation 5(1) of the Regulations provides that:

- (2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of section 20 and 20ZA as regards the agreement, are the requirements specified in schedule 2.

### **Consultation - The relevant regime**

26. The energy supply contracts Camden intend to enter into are of a sufficient value that it would require public notice, and accordingly the relevant consultation is Schedule 2 of the Regulations. However, Camden will not



be giving public notice for the contracts it enters into because it will rely on the public notices served by LASER when they set up the framework agreements which Camden will access to obtain their own contract.

## **Dispensation - Schedule 2**

### **Notice of Intention**

27. Camden will be serving Notice of Intentions relating, inter alia, to the energy supply contracts. Camden will be able to comply with all of the consultation requirements as set out in paragraph 1 of Schedule 2 other than the requirement to explain why Camden cannot invite nominations. This is because the consultation provisions anticipate that a public notice will be given whereas for the reasons set out at paragraph 19 above, Camden will be relying on notices that have already been given by LASER.

28. Camden therefore seeks dispensation from paragraph 1(2)(d) of Schedule 2 to the Regulations.

### **Landlord's Proposal**

29. After the time for receiving observations Camden will prepare proposals in respect of the proposed agreements. At that time the final identity of the energy suppliers and the relevant energy supply contracts may not be known.

30. Camden therefore seeks dispensation from the following paragraphs of Schedule 2 to the Regulations as regards:

4(2) providing the name and address of the other party to the contract and any connection it has with Camden.

4(4) providing an estimate of the relevant contribution to be incurred by the tenant;

- 4(5) providing an estimate of the total amount of expenditure under the proposed agreement;
- 4(6) providing a statement of the current unit cost or hourly or daily rate applicable;
- 4(7) providing a statement of the reasons why Camden cannot comply with sub-paragraph 4(6)(b) and the date by which an estimate can be provided; and
- 4(9) confirming the intended duration of the agreement.

31. Camden also seeks the following conditions pursuant to the dispensation:

- Camden is to provide to the Respondents within 21 days of entering into a contract information about:
  - i. The name of the energy supplier
  - ii. The date of the agreement
  - iii. The contract duration
  - iv. The date on which supply starts
  - v. The date on which the contract period endsby uploading that information on its website.
- Camden is to provide free of charge to any Respondent requesting it, a copy of the supply agreement which Camden has entered into with an energy supplier.

32. Camden seeks dispensation as set out above in respect of their proposed contracts because the tender process for energy procurement is incompatible with elements of the consultation process.

33. It is respectfully submitted that in these particular circumstances that dispensation be granted unconditionally as the lessees will not suffer any prejudice if dispensation is granted.

Dated this 16<sup>th</sup> day of MAY 2019

JUDGE & PRIESTLEY

**JUDGE & PRIESTLEY LLP**

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

**REF: LON/.....**

**RE: SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985**

**AND RE: [ALL/VARIOUS] RESIDENTIAL LONG LEASEHOLDERS OF  
PROPERTIES OF WHICH THE LONDON BOROUGH OF CAMDEN ARE THE  
REVERSIONERS**

**B E T W E E N:**

**LONDON BOROUGH OF CAMDEN**

**Applicant**

**- and -**

**LONG RESIDENTIAL LEASEHOLDERS OF THE  
LONDON BOROUGH OF CAMDEN SUBJECT TO  
COMMUNAL ELECTRICITY AND GAS SUPPLIES**

**Respondents**

---

**STATEMENT OF CASE**

---

REF: MDO/CAMD009/0265

Judge & Priestley LLP  
Justin House  
6 West Street  
Bromley  
KENT  
BR1 1JN

Tel: 020 8290 0333  
Fax: 020 8464 3332  
DX: 117600 BROMLEY 7