



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

Case Reference	:	LON/00AU/LDC/2015/0106
Property	:	All leasehold properties of the London Borough of Islington
Applicant	:	The London Borough of Islington Limited
Representative	:	Legal Services, London Borough of Islington
Respondents	:	All long leaseholders of the London Borough of Islington
Type of Application	:	Dispensation with Consultation Requirements
Tribunal Members	:	Judge Robert Latham Mr Ian Holdsworth FRICS
Date and venue of Hearing	:	25 November 2015 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	25 November 2015

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985.

The Application

1. By an application made on 23 September 2015, the Applicant seeks dispensation with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”). The application affects all long leaseholders of the London Borough of Islington.
2. The Applicant applies to dispense with the requirements contained in paragraphs 4 to 7 of Schedule 2 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). The Applicant’s existing agreements with gas and electricity suppliers are due to end on 31 March 2016. The Applicant proposes to enter into three new agreements for gas, large electricity site (100KW) and smaller electricity site (sub 100KW) which are intended to start on 1 April 2016 and to last for four years. Each would constitute a Qualifying Long Term Agreement. The Applicant asserts that they must enter into contracts by December 2015 to allow forward flexible purchasing to benefit the Respondent leaseholders.
3. On 24 September, the Tribunal gave Directions. The Tribunal recorded the documents that had been filed in support of the application. The Applicant was directed by no later than 5 October to place a notice on their website, in a prominent and easily accessible position, informing leaseholders and recognised tenants’ associations that they could view the documents filed in support of the application and the Directions, and take copies, including a copy of the Bundle. On 30 September, the Applicant notified the Tribunal that it had done so and provided a screenshot of the webpage and it’s URL.
4. By no later than 15 October, any leaseholder who intended to participate in the proceedings was required to complete a form attached to the Directions indicating whether they support or oppose the application. This form was to be sent to both the Tribunal and the Applicant. By no later than 30 October, any such leaseholder was required to send any written representations to the Tribunal and indicate whether they required an oral hearing. If an oral hearing were to be requested, this was to be held on 25 November.
5. No leaseholder has notified the Tribunal that they wish to oppose the application. On 16 October, the Applicant notified the Tribunal that no leaseholder had informed the authority that it intended to oppose the application. On 9 November, the Applicant provided the Tribunal with two copies of a Bundle of all the relevant documents. No leaseholder has attended the hearing today.
6. Section 20ZA(1) of the Act provides:

“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 works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

7. This application concerns the Applicant’s proposed contracts for the supply of gas and electricity. The contracts include the supply of gas and electricity to a range of departments within the Applicant authority. Although the value of gas and electricity contracts varies from year to year, in 2014/5, the value of the contracts was £5.18m (electricity) and £3.94m (gas). The housing department was the largest consumer: £2.02m (gas) and £2m (electricity). The Applicant has approximately 9,800 residential leaseholders. In 2014/5, 9,600 of the Respondents paid for electricity supplied to their buildings through the service charge and 1,100 paid for gas.
8. Gas and electricity prices remain extremely volatile. The Applicant wishes to react rapidly to the changing market and has adopted a flexible purchasing procurement model. This is inconsistent with their consultation duties under paragraphs 4 to 7 of the Consultation Regulations. The Applicant argues that the arrangement is in the interests of their tenants and that in last year’s falling market, the authority was able to make savings of £200,000. Their procurement arrangements have been subject to two previous dispensation applications in LON/00AU/LDC/2006/0043 AND LON/00AU/LDC/2013/0067. Both applications were successful. Each of these previous applications was determined at oral hearings at which the Applicant was represented by Counsel. In 2013, the application was opposed by the Islington Leaseholders Association.
9. On 14 August 2015, the Applicant sent all the Respondents and Recognised Tenants Association the Notice of Intention as required by paragraph 1 of the Schedule. The notice explained that the Applicant would be unable to comply with the next stage of the Consultation requirements and that it would be seeking dispensation. The letter was accompanied by a “Frequently Asked Questions” explaining the flexible purchasing procurement and why the Applicant considered that it would be unable to comply with the Consultation Regulations. The letter invited the Respondents to provide any comments by 16 September.
10. The Applicant received only 6 observations from the leaseholders. None of the observations objected to the Applicant’s proposed use of the flexible purchasing contracts of the dispensation application. In a witness statement, Lucy Smith, the Applicant’s Leasehold Services Manager summarises these observations. The Applicant has responded to these leaseholders within the requisite period of 21 days. In addition, the Applicant has set up a web page for leaseholders.

11. On 27 August, an Open Procedure advertisement was postmarked in the Official Journal of the European Union (OJEU) inviting suppliers to bid for the fixed cost element of the supplies to establish which would be most economically advantageous to the Applicant. The closing date for tenders was 24 September. The responses are being evaluated 100% on costs.
12. The next stage is for the Applicant to send the Notice of Proposal. It is unable to comply with the statutory requirements of paragraphs 4 to 7 of the Consultation Regulations as these are inconsistent with the proposed flexible purchasing method. The Applicant therefore seeks prospective dispensation in relation to the contracts which it intends to enter into. The Applicant has not yet entered into the contacts with the preferred suppliers, but in order to forward purchase the supplies needed from 1 April 2016, will need to do so before the end of the year. Each contract is expressed to last from 1 April 2016 to 31 March 2020.
13. The Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements. The Applicant has taken reasonable steps to bring their proposed action in respect of the flexible purchasing method to the attention of its leaseholders. No leaseholder has objected to the course that the Applicant proposes to take. No Respondent has suggested that s/he would be caused any prejudice were the Tribunal to grant this application. We accept the evidence of the Applicant that this procurement method has resulted in significant savings which have benefitted the Respondents. Given the continuing volatility of the energy market, it is likely to continue to achieve "best value".
14. The Tribunal notes that the only issue which we are required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27A of the Act.
15. The Tribunal directs the Applicant to take reasonable steps to bring this decision to the attention of the Respondents.

Judge Robert Latham

25 November 2015