



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

<b>Property</b>	<b>Southway Housing, 729 Princess Road, Manchester, M20 2LT</b>
<b>Applicants</b>	<b>Southway Housing Trust (Manchester) Limited</b>
<b>Respondents</b>	<b>Various Residential Long Leaseholders and Assured Tenants</b>
<b>Case number</b>	<b>MAN/00BN/LDC/2021/0082</b>
<b>Type of Application</b>	<b>Landlord and Tenant Act 1985 – Section 20ZA</b>
<b>Tribunal Members</b>	<b>K M Southby (Judge) H Thomas (Valuer Member)</b>
<b>Date of Decision</b>	<b>30 May 2022</b>

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**DECISION**

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## DECISION

**The consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) are dispensed with in respect of the qualifying long term agreement for gas supply with Crown Gas and Power.**

### BACKGROUND

1. This application is made by Southway Housing Trust (Manchester) Limited for dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 ('the Act').
2. The property comprises various buildings mostly low rise flats in buildings owned by the Applicant and served by a communal gas boiler with landlord's meter.
3. The applicant landlord wishes to enter into a qualifying long-term agreement to hopefully gain better value for money for tenants. The applicant was looking for this contract to commence on 1st January 2022 with the supplier Crown Gas & Power. The applicant has stated that they believe they can demonstrate a sound decision making process has been followed to try to achieve value for money.
4. Some consultation with tenants has already taken place. A section 20 notice of intentions was sent to all tenants on 20 October 2021, which invited tenants to make observations within the standard 30 day period. However, the landlord seeks dispensation from all remaining consultation requirements under section 20 of the Landlord & Tenant Act 1985 on the basis that it will be able to take advantage of more competitive energy prices if it entered into this agreement and, because of the volatile nature of energy procurement, it would not be able to obtain the best rates for the benefit of the tenants if it were required to carry out the section 20 consultation process.
5. The applicant landlord intends to recover costs incurred in purchasing electricity from tenants by means of service charges. However, the Tribunal is not presently concerned with the question of whether the amount of any such service charges is likely to be reasonable; or, indeed, whether such charges will be payable by the tenants. Any tenant has the right to make a separate application to the Tribunal in the future to determine such matters.

## INSPECTION

6. The Tribunal determined that an inspection of the property was unnecessary and with the consent of the parties the determination was conducted purely on the papers.

## LAW

7. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

8. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

*Where this section applies to any qualifying... long term agreement the relevant contributions of tenants are limited ... unless the consultation requirements have been either–*

- (a) *complied with in relation to the works ... or*
- (b) *dispensed with in relation to the works ... by the appropriate tribunal.*

9. “Qualifying long term agreement” for this purpose means an agreement entered into by or on behalf of the landlord for a term of more than twelve months (section 20ZA(2) of the Act), and section 20 applies to a qualifying long term agreement if relevant costs incurred under the agreement in any twelve month period results in the relevant contribution of any tenant, in respect of that period, being more than £100. (section 20(4) of the Act and regulation 4 of the Regulations).

10. 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 long term agreement the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

11. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works or enter into qualifying long term agreements, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works or entering into an agreement should be sought;
- obtain estimates for proposed works or agreements, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;

- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works or long term agreement explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

## **EVIDENCE**

12. The Tribunal have received written representations from the Applicant that due to recent volatility in the gas market the Applicant had been monitoring the situation in conjunction with their broker and had reached the conclusion that entering into a deal earlier than the conclusion of the Section 20 consultation process would result in better value for money for customers. As the new contract was due to commence on 1 January 2022 they argue that the matter was urgent.
13. The Applicant entered into an agreement on 11 November 2021 with Crown Gas and Power with the contract being effective from 1 January 2022. A notice of intention was sent to all customers on 20 October 2021 giving 30 days to make observations. This indicated to customers that due to the volatility of the market it was possible that the Applicant might cancel the consultation and seek dispensation to seek an advantageous deal for customers. In consultation with their energy brokers the Applicant concluded that it would be prudent to reach an early agreement and secure an agreement to protect against anticipated future price rises.
14. The tenants have been sent copies of the Tribunal correspondence and no response has been received from any of the Tenants.

## **CONCLUSIONS**

15. The Tribunal must decide whether it is reasonable for the Applicant to enter into a qualifying long term agreement without the Applicant first complying with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the agreement, the reason for the agreement being entered into, and the likely cost of the agreement. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
16. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to enter into a qualifying long term agreement. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
17. It follows that for the Tribunal to decide to dispense with the consultation requirements, there needs to be a good reason why entering into a qualifying long term agreement cannot be delayed. In considering whether or not it is reasonable to do so, the Tribunal must consider the prejudice that would be

caused to tenants by not undertaking the consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there is or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgency is genuinely required.

18. We note that in this case it is clear that a full consultation process was commenced but not completed. We are troubled at the notion that the dispensation requirements are to be disregarded in favour of speculation as to the future direction of energy markets, but we also note that the time in question was a period of significant volatility. We are satisfied that there was an element of urgency in this case and given the circumstances the Tribunal agrees that it would be reasonable to grant dispensation.
19. In reaching this conclusion we have had regard to the correspondence which has been sent to leaseholders both during the initial consultation raising awareness of the possibility that the consultation could be discontinued and notifying them that this was indeed the case. We note the fact that no objections were raised by the respondent leaseholders. No one has suggested that these works were not urgently required. No leaseholder has suggested that they will be prejudiced were we to grant dispensation. We conclude on balance that it was reasonable for this long term qualifying agreement to be entered into without the Applicant first complying with Section 20 consultation requirements. The balance of prejudice favours permitting the dispensation from the consultation requirements to be granted.
20. In these circumstances therefore, the Tribunal agrees with the request and grants dispensation from compliance with all of the requirements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the qualifying long term agreement for gas supply with Crown Gas and Power, as set out in the Applicant's Case Bundle.
21. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the qualifying long term agreement is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

**K M Southby**  
**Tribunal Judge**  
**30 May 2022**