



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

Case reference : **BIR/00CS/LDC/2022/0035**

Properties : **Various properties in the Midlands
formerly owned or managed by Accord
Housing Association**

Applicant : **GreenSquareAccord Limited**

Representative : **Devonshires, Solicitors**

Respondents : **Lessees of the Properties**

Representative : **None**

Type of application : **Application under section 20ZA of the
Landlord and Tenant Act 1985 for
dispensation from consultation
requirement**

Tribunal members : **Judge C Goodall
Mr V Ward FRICS, Regional Surveyor**

**Date and place of
hearing** : **Paper determination**

Date of decision : **1 February 2023**

DECISION

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Background

1. The Applicant is a private registered provider of social housing registered under the Co-operative and Community Benefit Societies Act 2014. Following a merger in 2021, it acquired the housing stock of Accord Housing Association Ltd (“the Properties”) in what it describes as its North region (in fact, the properties are located mainly across the Midlands). It also has a substantial number of properties in its South Region.
2. This application, dated 3 November 2022, is for dispensation from consultation under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) in respect of a qualifying long term agreement the Applicant intends to enter into for the supply of electricity and gas to the Properties.
3. There are 518 Respondents to the application. The Tribunal has been informed that the Applicant supplies gas and/or electricity for communal heating or lighting to the Properties the cost of which will fall to the Respondents through their service charges.
4. By Directions dated 22 November 2022, the Tribunal directed that all Respondents must be notified by e-mail, hand delivery, or first class post of this application, and that they must in addition be directed to the Applicant’s web-site on which all application documents were to be available, that they could request a hard copy of the full application, and that they could indicate their views on the application by completing a reply form.
5. The Applicant confirmed to the Tribunal that it had complied with this Direction by sending a letter by first class post on 25 November 2022 complying with this Direction.
6. The Directions also indicated that the Tribunal would deal with the application on the papers filed and without a hearing unless a hearing was requested.
7. No Respondent has objected to the application, and no request for a hearing has been received by the Tribunal.
8. The Tribunal has considered the application and makes the determination set out below.

Rationale for the application

9. The Applicant has provided a witness statement from Mr David Luscombe-Russell. He explains that the Applicant believes that to obtain best value contracts for the supply of electricity and gas, the Applicant needs to leverage its significant buying power across its whole portfolio of properties. It therefore seeks to place contracts with suppliers of energy through a utility consultancy, Inenco Group Ltd. The processes and time-scales applying by following that route are set out in paragraphs 8 to 11 of his statement, as follows:

- “8. The Applicant is obliged to comply with Public Procurement Regulations. One aspect of this obligation is that a standstill period of ten days must be allowed between the notification of bidders of the decision to award the contract and signing the contract with the successful bidder. The energy market does not operate in this way as bids are requested and contracts signed within a twenty four hour period. The only way to reconcile these two constraining obligations is to use a third party intermediary ("TPI").
 9. The Applicant entered into a TPI partnership with Inenco Group Limited as our Broker with an initial period of four years to provide expert utility consultancy and invoice validation services. Entering into this partnership will allow the Applicant to take the desired longer term, strategic approach in purchasing energy on behalf of its residents and business. Inenco will assist the Applicant by leveraging its significant combined buying power to give the Applicant direct access to the energy markets to buy the energy over a longer-term horizon which is industry best practice. This will ensure that the utility contracts we enter into are best value for our residents by scanning a wide variety of suppliers in the market with established trading practices and account management services. Inencos work will also assist us in making sure that the invoices we receive and pay are being charged at the correct contractual rates to avoid situations where our residents are being overcharged.
 10. Due to the nature of the energy market the Applicant is unable to follow the formal Section 20 Consultation procedure in order to comply with the Public Procurement Regulations for reasons set out in Paragraph 8 above. The purpose of entering long term gas and electricity contracts is to the benefit of all the Respondents who will be able to take advantage of the Applicant's purchasing power and economies of scale. By using a TPI to buy gas and electricity through the wholesale energy market, the Applicant is complying with best practice.
 11. The nature of the Long Term Agreements mean that it is not reasonably practicable for the Applicant to give the required information at the notice of proposal stage of the consultation process and also to have regard to the Resident's observations, as there has to be acceptance of prices offered in a small window of time. It is therefore not possible to act in the Resident's best interests as required by the Public Procurement Regulations whilst following the Section 20 Consultation procedure.”
10. Mr Luscombe-Russell states that, if dispensation is obtained, the Applicant intends to enter into a utility supply agreement, which would be in the nature of a qualifying long term agreement. This will take effect from 1st October 2023 for a period of three years for the South region,

with the North region being added at the expiry of its current contract on 1st October 2024 for the remaining two years.

Law

11. The Landlord and Tenant Act 1985 (as amended) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
12. Section 20 imposes another control. It limits the leaseholder’s contribution towards a service charge to £100 for payments due under a long term service agreement unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
13. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). For a qualifying long term agreement subject to public procurement regulations, those procedures are set out in Schedule 2 of those regulations.
14. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
15. The Tribunal’s role in an application under section 20ZA is therefore not to decide whether it would be reasonable to enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.
16. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.
17. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour

Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

Discussion and Decision

18. Copies of all leases for the Properties have not been provided. It would have been a significant task to do so, and disproportionate to the issue in hand. The Tribunal accepts the Applicants assurance that all leases oblige the Respondents to pay a service charge for the supply of utilities to the common parts of the Properties. If not, nothing in this determination can result in the Respondents being obliged to pay a charge which is not recoverable under the Respondent’s leases.
19. The Tribunal accepts the rationale for the proposal to enter into a QLTA for the purchase of gas and electricity as is set out in Mr Luscombe-Russell’s statement. We have not identified any prejudice that the Respondent’s would suffer as a result of the QLTA; indeed, entering into a QLTA as proposed by the Applicant is likely to be for the benefit of the Respondents. We therefore grant the application for dispensation to enter into the QLTA proposed by Mr Luscombe-Russell as set out above.
20. This decision does not operate as a determination that any costs charged to any Respondent for utility costs are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondent’s remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

21. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)