



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

Case reference : **LON/00BE/LDC/2020/0067**

HMCTS code : **P: PAPER REMOTE**

Property : **Various properties in various locations owned and managed by Clarion Housing Association Limited or Latimer Developments Limited**

Applicants : **(1) Clarion Housing Association Limited
(2) Latimer Developments Limited**

Representative : **Anthony Collins Solicitors LLP**

Respondent : **33,463 households in various regions**

Representative : **N/A**

Type of application : **For the determination of dispensation pursuant to S20ZA of the Landlord and Tenant Act 1985.**

Tribunal members : **Judge Tagliavini**

Venue : **PAPER REMOTE**

Date of decision : **2 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the tribunal was referred to are in a bundle of 94 pages, the contents of which have been noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal grants the first and second applicants dispensation from the section 20 Landlord and Tenant Act 1985 Act consultation requirements with reference to the requirements of the Service Charges (Consultation) (England) Regulations 2003, for the purpose of entering into long-term qualifying agreements with energy suppliers as part of the Master Agreement dated 4 March 2020 made between Clarion Housing Group and Inenco Group Limited for the procurement of gas and electricity supplies during the period 1 April 2021 to 31 March 2024.**
-

The application

1. This is an application by the applicant landlords, via their parent company Clarion Housing Group, seeking the tribunal's grant of dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the purpose of entering into long-term qualifying agreements with energy supplier, following recommendation by its energy broker Inenco Group Limited ("Inenco") for the bulk purchase of gas and electricity during the period 1 April 2021 to 31 March 2024 as part of the Master Agreement dated 4 March 2020 made between Clarion Housing Group and Inenco Group Limited.

The applicants' case

2. In support of the application the tribunal was provided with witness statements dated 15 May 2020 and 28 July 2020 from Mr. Adrian Shaw Head of Service Charges of Clarion Housing Group and Mr. Dan Pardesi Head of Social Housing, MEI Chartered Energy Manager for Inenco dated 11 August 2020. The tribunal were also provided with an electronic bundle of documents containing 54 pages.
3. It was said in the application, that dispensation from the consultation requirements to enter into long-term qualifying agreements would enable the applicants to take advantage of more competitive energy

prices, which would not otherwise be available to them due to the volatile nature of energy procurement, if consultation with tenants was required. Therefore, the tenants would potentially lose the benefit of lower energy prices that would otherwise be available to housing associations, who are able to bulk buy as part of a 'pot' enabling them to get value for money for their tenants.

4. In addition, the applicants stated that were dispensation not granted, the applicants would be unable to provide estimated costs to tenants as required under the Service Charges (Consultation) (England) Regulations 2003, due to the energy having to be purchased as and when a competitive price was identified by the brokers on the wholesale energy market.
5. In a witness statement dated 28 July 2020, Mr. Shaw responded to objections received from two tenants to the application for dispensation. Mr. Shaw reiterated that the application dealt only with dispensation from the consultation requirements and did not affect the tenant's rights to dispute the amount of any service charge (including energy costs) under the provisions of the 1985 Act.
6. Mr. Shaw also stated that the applicants are committed to a sustainability strategy that covers the Clarion Housing Group, although this needs to be balanced against its obligation to reduce costs. Mr. Shaw stated that two of the key drivers for the energy procurement process that is to be followed by Inenco are social value and sustainability. This is with the aim of tackling fuel poverty within the applicants' residents communities, through the adoption of a long term strategy to achieve a low and stable price of energy and balance against environmental sustainability.
7. In the witness statement of Mr. Pardesi, the procurement process was explained in greater detail. Mr. Pardesi stated higher energy prices would be incurred were dispensation to enter into long-term qualifying agreements not granted, due to the enforced use of 12-month energy supply contracts that would be subject to the volatility of the markets.

The respondents' case

8. The tribunal received objections from only two (Bow) tenants, Mr. John Paul Hayes and Ms Claire Grisaffi by email dated 9 July 2020. Although, the applicants took it upon themselves to redact the names and addresses of these tenants, this measure was neither sought by the tenants themselves or granted by the tribunal. As these proceedings are effectively public hearings and the tribunal's determinations a matter of public record, the tribunal determined that the usual transparency and openness of its decisions would be maintained.
9. Mr. Hayes and Ms Grissafi objected to the application for dispensation due to the approach of the applicants being vague, lacking in

transparency and one that would remove tenants from the selection process while not aligning with the social purpose of Clarion. It was also said the replacement of the democratic process simply to save time and potentially money is unacceptable, as Clarion is a housing association and acts as a business with a social purpose. Further, due to the volatility of the energy market, there is a risk that the long term agreements may be more expensive for residents than other options.

The tribunal's decision and reasons

10. The tribunal finds that it is reasonable and appropriate to grant the dispensation sought by the applicants from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 and by reference to the Service Charges (Consultation) (England) Regulations 2003.
11. The tribunal accepts that, entering into long-term qualifying agreements for the bulk purchase of energy provides financial benefits for tenants of social landlords and finds that this does not exclude environmental and sustainability concerns. The tribunal also takes into account that of the over 36,000 households identified by the applicants, only two have objected. Although the tribunal accepts that these tenants have raised valid concerns, it is nevertheless of the opinion that were dispensation not to be granted, it is likely that a significant detriment would be incurred by the respondent tenants as a result.
12. Therefore, the tribunal grants the first and second applicants dispensation from the section 20 of the 1985 Act consultation requirements with reference to the Service Charges (Consultation) (England) Regulations 2003, for the purpose of entering into long-term qualifying agreements with energy suppliers as part of the Master Agreement dated 4 March 2020 made between Clarion Housing Group and Inenco Group Limited for the procurement of gas and electricity supplies during the period 1 April 2021 to 31 March 2024.

Name: Judge Tagliavini

Date: 2 September 2020

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).