



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

Case reference	:	BIR/00CS/LDC/2021/0015
Property	:	Properties in the ownership of The Black Country Housing Group
Applicant	:	The Black Country Housing Group
Representative	:	None
Respondents	:	The Leaseholders
Type of application	:	An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.
Tribunal members	:	Judge P.J. Ellis Graham Freckelton FRICS
Date of Decision	:	October 2021

DECISION

The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of a proposal to enter a long-term qualifying agreement for the supply of electricity.

1. This is an unopposed application by the Applicant, Black Country Housing Group 134, High Street Blackheath West Midlands B65 0EE, for dispensation from consultation requirements under s20ZA Landlord and Tenant Act 1985 (the 1985 Act).
2. The Respondents are the leaseholders. The Tribunal has seen evidence that the Respondents do not wish to be considered active in this matter and they support the application.
3. The application was issued on 7 July 2021. Directions were given on 22 July 2021. The only issue identified under this application for the Tribunal is to determine whether it is reasonable to dispense with statutory consultation requirements. This application is not concerned with the reasonableness or payability of any costs or charges associated with the contract the subject of the application.
4. The Tribunal directed that no inspection of the properties was necessary. The parties have not requested an oral hearing. The Tribunal makes this determination on the basis of the papers served by the Applicant.
5. The Applicant seeks dispensation from all of the consultation requirements of section 20 of the 1985 Act so that it will be able to enter Energy Supply contracts for all the leaseholders in order to swiftly take advantage of the more competitive energy price which it would not be able to do if it were to carry out a full consultation in accordance with the requirements of s20 of the 1985 Act.
6. In support of its application the Applicant asserts that it recognises the difficulties its customers face and wants to maximise the opportunity to pass on reduced energy costs to them by securing the lower summer prices currently on offer. Energy as a commodity is volatile with energy prices

changing 3 - 20 per cent in a day and higher over a year. Current energy prices are attractive, and it wants to secure this benefit and provide long term protection for the leaseholders. Competitive quotations for energy are only held for a matter of hours rather than the 66 days needed for consultation under section 20 of the 1985 Act.

7. Further, the Applicant is unable to provide estimated costs to its residents which it is required to do as part of the Service Charges (Consultation Requirements) England 2003 (the 2003 Regulations). By using a broker, Select NRG who have access to prices the Applicant is unable to obtain, it will have a fixed price and the estimated costs for budgets for service charges will be more realistic.
8. The proposed energy supply contract will be a qualifying long-term agreement. The Applicant is aware of its consultation obligations under s20 of the 1985 Act and the 2003 Regulations in relation to such agreements and makes this application in order to secure a contract for the benefit of leaseholders.
9. The Tribunal was shown the leases relating to the properties which contained normal obligations on the part of the landlord to provide services including electricity supply to the relevant properties in return for the payment of service charges by the tenants.
10. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20.
11. Although the leaseholders support this application, the Tribunal is required to exercise some oversight as s27ZA of the 1985 Act provides:

“(1) 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”.

12. In this case the Tribunal accepts the Applicant’s submission that there is volatility in the energy supply market. It has identified a means to secure an energy supply contract at a price favourable to the leaseholders. The application is supported by the leaseholders who have indicated they do not wish to take part in these proceedings.
13. Accordingly, the Tribunal is satisfied it is reasonable to dispense with the consultation requirements.

Appeal

14. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Tribunal Judge PJ Ellis.