



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

- Case Reference** : CHI/40UE/LDC/2014/0029
- Property** : Various properties (approximately 4156 throughout the South West of England) of which the Applicant is landlord
- Applicant** : Knightstone Housing Association
- Respondent** : The lessees
- Type of Application** : To dispense with the requirement to consult lessees before entering a qualifying long-term agreement for the supply of energy
- Tribunal Member(s)** : Judge D. Agnew
Mr B. Simms FRICS
- Date of Decision** : 23rd September 2014

DECISION

Summary of the decision

1. The Tribunal agrees, under section 20ZA of the Landlord and Tenant Act 1985, ("the Act") to dispense with the formal consultation requirements set out in section 20 of the Act in respect of the qualifying long term agreement for the purchase of energy for supply to the Applicant's housing stock of 4156 properties from April 2015 onwards, subject to the condition that, if challenged, the Applicant can demonstrate that the energy was purchased at the lowest price reasonably obtainable and at the optimum time reasonably foreseeable on the information available.

Background

2. On 12th June 2014 the Applicant Housing Association made an application to the Tribunal for an order under section 20ZA of the Act dispensing with the consultation requirements of section 20 with regard to a qualifying long term agreement that they wish to enter for the purchase on the wholesale energy market of gas and electricity supplied to their 4156 properties. Currently they purchase their energy supply on an annual basis but this is more expensive than under longer term agreements.
3. As energy prices are volatile and can change very quickly, the Applicants wish to be able to move quickly, with the assistance of the Inenco Group, to take advantage of low prices when they become available. They are therefore unable to do this and comply with the statutory consultation process which takes approximately three months. Prices cannot be held for anything like that period of time.
4. A considerable amount of information has already been supplied to their tenants, say the Applicants. This has been by letter, information bulletins and via their website. Formal meetings have also been held and notices pinned on notice boards.
5. Directions were issued by the Tribunal dated 22nd July 2014. These Directions included a provision for bringing the Application papers and the Directions to the attention of the lessees and provided for the matter to be determined by the Tribunal by way of written representations rather than by an oral hearing. No party objected to this procedure. If a leaseholder wished to oppose the application they were to write to the Tribunal by 20th August 2014 to say so and to explain why they objected.
6. Only one objection was received by the Tribunal. This was from Mr and Mrs Sacof who have a long lease of a flat in Knightstone. Their flat does not have a gas supply. The basis of their objection was that there is no explanation given for the "sudden need for urgency. They wonder if the Applicant has forgotten to renew an existing contract and they see no reason why those who pay should not be consulted. They say that it is

is important that there is proper consultation to enable leaseholders to examine the quotations obtained.

The Determination

7. The Tribunal is aware from its own knowledge and experience that wholesale energy prices are volatile, can change quickly, and that as a general rule it is more advantageous to purchase energy on a longer rather than a shorter term basis. The Tribunal is also aware that the volatility of the market means that it is impossible for prices to be held whilst the statutory consultation process is worked through.
8. The leading case which sets out the criteria for dispensing with consultation under section 20ZA of the Act is the Supreme Court case of *Daejan Investments Limited v Benson [2013] UKSC 54*. The upshot of this case is that the Tribunal is concerned with whether or not the lessees would be prejudiced if an order were to be granted.
9. The Tribunal has concluded that there is no evidence that the lessees will be prejudiced by an order being made in this case. The whole purpose of entering into a long term agreement for the supply of energy in this case is to enable the energy to be acquired at a cheaper price than would be the case if they could only enter into a contract for not more than one year. It is, in the Tribunal's view, highly unlikely that any lessee who is not an expert in this field would be able suggest an alternative supplier to the one recommended by the Inenco Group or be able to make any meaningful observations on their recommendations in this highly specialised field, and certainly not within the timescales that would be required.
10. The Tribunal concludes, therefore, that the lessees will not be prejudiced by being deprived of consultation. The lessees can always challenge the reasonableness of the cost of their energy when charged in their service charges by applying to the Tribunal under section 27A of the Act. In order to address the concerns of Mr and Mrs Sacof the Tribunal determines to add a condition to the grant of dispensation that, if challenged in the future under section 27A of the Act as to the reasonableness of the energy charges, the Applicant must be able to demonstrate that the price obtained was the lowest price reasonably obtainable and that the contract was entered into at the optimum time reasonably foreseeable on the information available. The Tribunal makes the order accordingly. The Applicant must bring this decision to the attention of all its lessees in the same way that it was required to serve a copy of the Application and any Directions of the Tribunal.

Dated the 23rd September 2014

Judge D. Agnew (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking