

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

BETWEEN:

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH**

Applicant

and

THE LEASEHOLD OWNERS OF 14,082 PROPERTIES

Respondents

WITNESS STATEMENT OF HUSSEIN EL BAHRAWY

I, Hussein El Bahrawy, of The Design Service, Wandsworth Council, The Town Hall, Wandsworth High Street, Wandsworth, London, SW18 2PU WILL SAY AS FOLLOWS:-

1. I am employed by the London Borough of Wandsworth ("the Council") and am based at the above address. I am employed as the Head of the Design Service, which is part of the Council's Finance Directorate. I am responsible for directing and managing professional staff engaged in the delivery of engineering services, which includes the Energy Management Team. I am authorised to make this statement on behalf of the Council in support of this application.
2. There is now produced and shown to me marked "HE1" a paginated bundle of documents to which I shall refer in this witness statement.
3. The Council has made 3 previous applications to the Tribunal in March 2009 (for gas), February 2010 (for electricity) and 2012 (for electricity and gas) seeking dispensation from all of the consultation requirements contained in s.20 of the Landlord and Tenant Act 1985, in respect of gas for communal heating and hot water supplies and electricity supply included as part of service charges. The Tribunal

granted the Council dispensation in each case and the Council entered into a framework agreement for the supply of gas and electricity. Copies of the decisions in applications LON/00BJ/LDC/2009/0021, LON/00BJ/LDC/2010/0017 and LON/00BJ/LDC/2012/0061 (the same number as per the 2010 application was incorrectly quoted on the decision dated 22 August 2012) can be found in HE1.

4. The current framework term for both Gas and Electricity flexible agreements mentioned above ends on the 30 September 2016 and must be renewed for the period October 2016 to September 2020. As such, the Council is required to make a further application for dispensation from the requirements of s.20 of the Landlord and Tenant Act 1985 ('the 1985 Act').
5. The Landlord and Tenant Act 1985 requires landlords to consult with leaseholders before entering into a 'qualifying long term agreement' of more than 12 months. If the consultation requirements are not satisfied, then the landlord's ability to recover contributions from the leaseholders will be restricted unless the Tribunal makes an order dispensing with the consultation requirements.
6. Fuel contracts fall under the definition of a 'qualifying long term agreement' within the 1985 Act, where they exceed one year and the contribution from any one leaseholder might exceed £100 per annum.
7. As the Tribunal is no doubt aware, energy markets are both complex and volatile, making them liable to sudden price fluctuations which are often linked to real or perceived threats to supply and demand that can significantly vary prices on a daily basis. The majority of the energy price payable is market-related, although Government taxes and pass-through charges have been increasing significantly in recent years. The key variant and influencing factor is the wholesale price. Because of its volatility, the energy market cannot be index linked and true cost savings accrue directly from a lower absolute outlay. Given the nature of the energy market and influencing factors such as the increasing move to renewables, carbon reduction measures, taxation, reduction in generating capacity and increased reliance on energy imports, it is very unlikely that the opportunity for any absolute cost reduction will occur on a consistent basis. Currently it may be feasible to achieve 'one-offs' from a single-year move from a high price to a lower rate, but this would be short term and unsustainable.

8. Previously the Office of Government Commerce (now part of the Efficiency and Reform Group within the Cabinet Office) as part of a Pan-Government Energy Project to improve the way the public sector buys its energy recommended that all public sector bodies buy energy through an aggregated, flexible, risk-managed framework managed by experts or Central Purchasing Bodies (CPBs).
9. The effectiveness of the framework agreement methodology is derived from the ability of public sector authorities to, in effect, work together and collectively buy energy on the wholesale market through a Central Purchasing Body (CPB) that aggregates and purchases gas and electricity commodities when market conditions are favourable. The ability to purchase 'chunks' of energy over longer periods of time avoids the high-risk strategy of single day purchasing typically associated with fixed price, fixed period tendering.
10. The Council's CPB are LASER (Local Authority South East Region), who are active in Pan-Government initiatives and have been assessed and approved as a best practice energy procurement service provider by the OGC led collaborative energy category and the London Energy Project (part of London Councils Capital ambition). The framework contract arrangement has been let in compliance with EU regulations. The mechanism allows purchasing decisions to be undertaken; there is no element of trading. A full OJEU process is undertaken by LASER in determining flexible suppliers.
11. To keep the forward purchasing window of aggregated quantities intact participating organisations have been required to commit to the next four year term to enable energy to be procured into future years. As already mentioned above, the ability to purchase the portfolio requirement according to market liquidity and availability means that future years' purchases can be made where value is seen. In this way, full advantage of any favourable market conditions is ensured in the delivery of continued best value for money, which is in the leaseholders' best interests. However, the requirement to purchase aggregated volumes 'immediately' when the market is seen as offering value means that it is not possible to comply with statutory requirements within the timescale. Accordingly, the Council is making this application to the Tribunal to dispense with the consultation requirements in relation to particular energy contracts. The Tribunal has the power to dispense with all or any of the consultation requirements, if satisfied that it is reasonable to do so.

Gas supply for communal heating and hot water supplies

12. There are 752 leaseholders in the London Borough of Wandsworth who are required to pay for the provision of heating and hot water from a communal boiler system. The cost of gas used by these boilers forms part of the heating and hot water charge.
13. Procurement of the Council's gas supplies were assigned to Purchase in Advance, flexible framework contracts on 1 October 2009. The current Flexible Supplier is Total Gas and Power.

Electricity

14. There are 14,082 leaseholders in the London Borough of Wandsworth who are required to pay for the provision of electricity through their service charges.
15. Similar to the provision of gas, all electricity contracts aligned with the 1 October 2010 flexible framework entry date were assigned to Purchase in Advance agreements at that time. The contract cycle for the remaining baskets of smaller quarterly billed communal services accounts were arranged so that their contract end date coincides with the forthcoming flexible agreement renewal date. Of these accounts the larger consuming supplies will be added to the flexible framework, as permitted within the capped limits of the supplier. The remainder will be dealt with as fixed contracts that will remain in tandem with the flexible agreement to facilitate future inclusion, as permitted, in later years of the flexible agreement for best value. The current Flexible Supplier is Npower, who will continue to be the Supplier from October 2016.

Performance

16. The Council has been a partner to the framework agreement since 1 October 2009 and the agreement has been found to be very effective in mitigating the effects of a changeable energy market. The Efficiency and Reform Group (ERG) within the Cabinet Office has developed metrics to help assess the performance of wholesale energy purchasing as part of its work on Centralising Category Procurement. Over the period April 2009 to September 2015, LASER report that the Purchase in Advance contracts have outperformed the market average by 4%. For the Wandsworth contract, this amounts to a median saving of £108,120 a year.
17. Under the Purchase In Advance (PIA) framework agreement, energy is bought over a period of time before the start of the annual period. As such, the price is fixed for the

year and not subject to percentage increases at minimal notice, as applicable to the domestic market.

18. LASER report a saving to the Council of at least £441,800 a year as a result of the aggregation of energy supplies, lower supplier management fees & lower OJEU compliant transaction costs.

Consultation

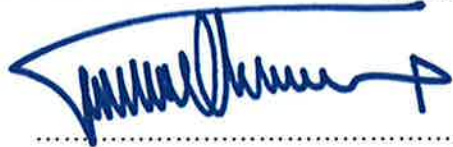
19. The Council is aware that it is required to give notice of its intention to make such an application to the Tribunal to affected leaseholders.
20. Over 14,000 leaseholders will be affected the application. I am informed by Ms Elizabeth Parrett, Leasehold Services Manager with Housing Management Services, that when dispensations have been sought previously, the Council has held meetings with leaseholders to give them an opportunity of asking questions. When the last dispensation was sought in 2012, the Council held 4 consultation meetings in 2 venues in different areas of the Borough; 2 of the meetings were held during the daytime and 2 in the early evening. All the relevant documents were available for inspection at these meetings and Council Officers were present to answer any queries. Ms Parrett was present at all the meetings and she has informed me that only 61 leaseholders attended the 4 meetings, less than 0.5% of the total number of leaseholders affected. Ms Parrett has also informed me that during the last consultation in 2012, she and her team received 85 telephone calls and 40 e-mails.
21. The use of e-mail has increased dramatically since the last consultation exercise was carried out and the Council anticipates that this will be the most popular form of contact by leaseholders. The Council is also encouraged to conduct as much of its business online as possible in order to reduce costs to its taxpayers. The Council does not therefore intend to hold consultation meetings this time, unless the Tribunal considers that such meetings are necessary.
22. The Council proposes that a single page letter is sent to all leaseholders setting out details of the application and informing them that a copy of the application with all the relevant documents is available on the Council's website. The letter will also inform the leaseholders that directions have been made by the Tribunal, that the directions have been published on the Council's website and that any leaseholder may respond to the application with copies of their response also being sent to the Council. The letter will also advise leaseholders that copies of the application documents can be

provided to them on request either in electronic format, or as hard copies and will provide contact details (telephone and e-mail) in the event that any leaseholder wishes to speak to a Council Officer or make any comments.

23. Should the Tribunal consider that it would also be appropriate for the Council to also hold consultation meetings, the Council proposes to hold 4 meetings as before in 2 different venues, with 2 of the meetings being held during the daytime and 2 during the early evening. All the relevant documents will be available for inspection at these meetings and officers will be present to answer any questions.
24. In the event that the Tribunal gives directions for the conduct of this application without the need for a hearing, I would respectfully request that the Council be given a period of not less than 21 days between the date of the directions order and the date for publication of details of the application and the directions on its website to ensure that there is sufficient time for the Council's website providers to make the necessary arrangements.

I believe the facts stated in this witness statement are true.

Signed



.....
Hussein El Bahrawy

Dated

24th May 2016

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

BETWEEN:

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH**

Applicant

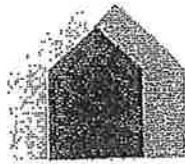
and

THE LEASEHOLD OWNERS OF 14,082 PROPERTIES

Respondents

EXHIBIT "HE1"

This is the exhibit marked "HE1" referred to in the witness statement of Hussein El Bahrawy dated 24 May 2016



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 20ZA

LON/00BJ/LDC/2009/0021

Applicant: London Borough of Wandsworth

Respondents: The leasehold owners of 1,415 properties required to pay for heating and hot water from a district heating system.

Properties: 1,415 leasehold properties referred to above.

Appearances: Mr E Peters (of Counsel)
Mr R Holt (Business Manager,
London Borough of Wandsworth)
Mrs E-Parette (Leasehold Services Manager,
London Borough of Wandsworth)

No respondents attended nor were they represented.

Date of Hearing: 28 May 2009

Date of Decision: 2nd June 2009

Members of Tribunal: Mr S. Shaw LLB (Hons) MCI Arb
Mr R. Humphrys FRICS

DECISION

INTRODUCTION

1. This case involves an application dated 16 March 2009 ("the Application") made by the London Borough of Wandsworth ("the Applicant"). The Application is for an Order dispensing with the consultation requirements contained within Section 20 of the Landlord and Tenant Act 1985 ("the Act") pursuant to Section 20ZA of the Act. The Respondents are a total of 1,415 residential leaseholders within the Applicant Local Authority whose names are listed in a schedule appended to the Application.
2. On 19 March 2009 the Tribunal issued directions to be complied with by the Applicant in respect of this Application. Those Directions were, in short, that the Applicant was required to supply a copy of the Directions and various other documents to each of the Respondents and moreover to supply two separate dates available for the viewing of further or other documents as may be requested. In addition, as soon as possible but not later than 17 April 2009, the Respondents were required to write to the Tribunal (with a copy for the Applicant) indicating whether they consented to the Application, or opposed it, and if the latter, their reasons for doing so.
3. In the event, none of the Respondents wrote at that stage directly to the Tribunal expressing any opposition to the Dispensation Orders requested. Moreover, as well as complying strictly with the Tribunal's Directions, the Applicant took the opportunity of using the meetings which had been directed as occasions to discuss any queries relating to the Application with the Applicant's officers. The Tribunal was informed that a total of 12 leaseholders attended these meetings. None of the leaseholders expressly objected to the Dispensation Order but there were requests for further clarification and details, which were supplied by the Applicant. In the event, and subsequent to one of these meetings, one leaseholder did indeed write to the Tribunal (by letter dated 15 April 2009) which letter will be referred to below. It should also be mentioned that the request for clarification took the form of approximately 70 telephone calls to the Applicant, each of which the Applicant dealt with. All of these

matters are set out in a witness statement made by Mrs E Parette dated 16 April 2009, who is the leasehold services manager of the Applicant.

THE HEARING

4. A hearing of this Application took place on 28 May 2009. The hearing was attended by Mr E Peters of Counsel for the Applicant and also Mr R Holt and Mrs E Parette of the Applicant. Both Mr Holt and Mrs Parette had prepared witness statements which were included in the hearing bundle.
5. The nature and reasons for the Applicant's application are set out very fully and helpfully in the witness statement of Mr Holt (Business Manager of the Applicant) dated 26 March 2009.
6. The gist of his evidence was to explain how, since 1990, the UK fuel market has changed in the manner in which competition between large business users takes place. As is well known, there has been great volatility in recent years in energy prices, which volatility has been accentuated during the current economic recession. The result of all this has been that best prices are often obtained, when tendering, by entering into an arrangement which effectively minimises and mitigates the risk of price fluctuation. Mr Holt explained to the Tribunal that the Applicant has been in negotiation with an organisation which is termed "a professional buying organisation" called LASER. LASER is one of six different professional buying organisations commended to Local Authorities and other large institutions by the Office of Government Commerce (an independent advisory body set up by the Government).
7. Historically, the Applicant has conducted its own negotiations when purchasing gas and electricity which has generally worked well until recent years. More recently, and because of the volatility in the market, it has become necessary in order to make appropriate savings, to adopt a more sophisticated approach. This is where the services of LASER and other professional buying organisations come into play. Those organisations, acting for very large institutions, have very substantial buying power, and are able to negotiate far more competitive prices with the energy suppliers than individual customers (however large)

would be able to achieve. Mr Holt explained to the Tribunal that this is because LASER will often buy energy in advance (based on estimated demand from its own customers) or will have a more short term but flexible arrangement with the energy supplier. These different methods are explained more fully by Mr Holt at paragraph 10 of his witness statement.

8. The nature of the arrangement required to be entered into however with LASER is usually in the form of a 4 year contract. Those contracts run in cycles from a particular date and the current cycle being pursued by LASER in fact started a year ago on 1 October 2008. However the Tribunal was informed that LASER will permit entry by the Applicant into such an arrangement to commence a year later on 1 October 2009, provided a decision is made promptly and provided the arrangement or agreement lasts until the end of the cycle in October 2012. This is one of the ways in which Laser can keep prices down by "forward purchasing".
9. For the reasons to be set out more fully below, the entry into such an arrangement presents difficulties in terms of complying with the consultation requirements set out in Section 20 of the Act, and the regulations made pursuant thereto. Before looking at those provisions however it should be pointed out that data has been compiled by the Office of Government Commerce to the effect that those who have entered into this type of arrangement have been able to achieve in some cases savings of up to 42% on fuel charges.
10. The manner on which the system operates is that LASER, effectively on behalf of its customer, (in this case the Applicant) is required, on a round-the-clock basis, to make decisions sometimes on very short notice indeed, as to whether to avail itself of fluctuations in the market price in order to achieve best value for its customers. The organisation monitors fuel prices constantly and, by being available in this way, and moreover by buying in such very significant bulk, highly competitive rates can be achieved. Of course this process would be quite impossible for the ordinary (even institutional) consumer.

11. Mr Holt informed at the Tribunal that LASER represents approximately 115 other Local Authorities and other public bodies. It deals with 3,700,000 kilowatt hours of gas and has a purchasing capacity of some £350million - £500million per annum. The track record of LASER as well as the other professional buying organisations is monitored and scrutinized by independently appointed Government panels.

THE LAW

12. The entry into an agreement of this kind with LASER and/or its supplier British Gas, would constitute a "qualifying long term agreement" for the purposes of the Act, in that it would be an agreement for a term of more than 12 months for the type of service referred to in the Act. As such it is in principle subject to the consultation requirements set out in Section 20 of the Act, and expanded upon in Schedule 2 to the Services Charges (Consultation Requirements) (England) Regulations 2003. As is well known, those regulations provide for service of a Notice of Intention, coupled with a process of consultation and a subsequent further notice of the landlord's proposals with a yet further period for taking into account observations. Without going into the express timetable for this process, it will be apparent from the foregoing that it would be quite impossible to comply with these regulations, if entry into this type of arrangement with LASER were to proceed. This is because LASER receives quotations from its supplier of rates, which will apply sometimes for minutes rather than weeks. Accordingly, decisions have to be taken within a very narrow window of opportunity, within which it is impossible to comply with the regulations. In many respects, the regulations were never drafted to deal with a situation of this kind, but more for a situation in which contractors providing more conventional services are bidding for a contract.

ANALYSIS OF TRIBUNAL AND CONCLUSION

13. Having heard the representations made on behalf of the Applicant and considered with some care the material provided, the Tribunal is satisfied that this is a case in which it is reasonable to dispense with all the consultation provisions of Section 20 of the Act. It was mentioned above that of all the

leaseholders posted with notice of this Application there were no formal objectors at the meetings held (which were attended by some 12 people). There were some 70 telephone enquiries but, as understood by the Tribunal none of those materialised into any formal objection to the Application. There was, as noted above, one letter, dated 15 April 2009 to the Tribunal and the Applicant from one of the leaseholders mentioned in the Schedule to the Application. That leaseholder in essence was concerned that the granting of an Order of this kind would have the effect of releasing the Applicant from its consultation obligations not only in respect of the supply of gas, but in all other respects and in relation to all other services provided to leaseholders. In this respect, this leaseholder can be reassured that the Dispensation Order made by this Tribunal relates to the supply of gas only. It does not release the Applicant from its consultation obligations in respect of any other services supplied to leaseholders. Moreover, and this should be stressed, the Order made is in relation to the obligation to consult pursuant to Section 20 of the Act. If, after charges are levied in respect of the supply of gas, any leaseholder wishes to bring an Application under 27A of the Act, contending that for whatever reason, the charges made are unreasonable or excessive or otherwise offend against the Act, there is no barrier presented to them by this Order and precluding any such Application (save in respect of the consultation provisions). Of course, such an Application would have to be supported by appropriate evidence and would, in due course be considered on its merits by the Tribunal.

14. Furthermore, that leaseholder was concerned that the cost of bringing this Application to the Tribunal might be recouped from leaseholders by the Applicant. The Applicant confirmed to the Tribunal at the hearing that there was no provision for so doing in the relevant leases and that in any event it had no intention of raising such a charge.
15. For the reasons indicated above, the Tribunal is satisfied that it is reasonable to make an Order dispensing with the consultation requirements of Section 20 of the Act and of the Service Charges (Consultation Requirements) (England) Regulations 2003 for the purpose of entering into an agreement or agreements for the purchase or supply of gas as referred to at paragraph 1 of Part 7 of the Application made to the Tribunal. This dispensation will apply until the expiry of the remaining 3 year cycle which, as understood by the Tribunal occurs on 1

October 2012. Any further dispensation in respect of any new agreement will then need to be the subject of a fresh Application to the Tribunal. In anticipation of the fact that this may indeed be the case, the Tribunal would observe that it may be helpful in any subsequent consideration of such an Application to have available a comparative study of data demonstrating the greater benefits of an arrangement of this kind as compared with the more conventional arrangement. Mr Holt was kind enough to indicate to the Tribunal that there would be a monitoring exercise carried out by the Applicant in any event during the course of the agreement.

S. Shaw

Legal Chairman:

S. Shaw

Dated: 2nd June 2009

LON/00BJ/LDC/2010/0017

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 20ZA OF
THE LANDLORD & TENANT ACT 1985**

Address: 13,792 Residential Properties in the London
Borough of Wandsworth

Applicant: London Borough of Wandsworth

Respondent: 13,792 leasehold of the properties referred to
above

Application: 9 February 2010

Inspection: Not applicable

Hearing: 29 April 2010

Appearances:

Landlord

Mr E. Peters
Mrs E. Parrette
Mr B. Holt

Counsel
Leasehold Services Manager
Business Manager

For the Applicant

Tenant

Did not attend and were not represented

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr J. Avery FRICS
Mr A. Ring

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BJ/LDC/2010/0017

IN THE MATTER OF SECTION 20ZA OF THE LANDLORD & TENANT
ACT 1985

AND IN THE MATTER OF 13,792 RESIDENTIAL PROPERTIES IN THE
LONDON BOROUGH OF WANDSWORTH

BETWEEN:

LONDON BOROUGH OF WANDSWORTH

Applicant

-and-

13,792 RESIDENTIAL LESSEES IN THE LONDON BOROUGH OF
WANDSWORTH

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the statutory consultation requirements imposed by section 20 of the Act in relation to the procurement of three groups of electricity contracts ("the electricity contracts"). The first electricity contract is for the supply of energy to monthly billed communal establishments services. The second contract is for the supply of energy to housing estate street lighting. The third contract relates to small quarterly billed communal services. The Respondents to this application are a total of 13,792 residential leaseholders within the borough whose names are listed in the schedule annexed to the application.

2. On 16 February 2010, the Tribunal issue Directions in this matter. Direction 2 required the Applicant to place an advertisement in the Wandsworth Guardian and on their website informing potential Respondents of the application. In both instances, the Respondents could inspect the application, the Directions and, if necessary, take copies. Furthermore, the Applicant was required to provide dates and venues of at least four open days/evenings where further information could be made available to the Respondents. The Applicant has fully complied with this direction. Direction 3 required any of the Respondents to inform the Tribunal and the Applicants if they either consented or opposed the application. The Applicant has received no telephone calls relating to the application or any objection.

The Law

3. It was common ground that the electricity contracts are qualifying long-term agreements within the meaning of section 20(1) of the Act and upon which the Applicant was obliged to carry out statutory consultation in accordance with Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20ZA of the Act provides the Tribunal with a discretion to dispense with the consultation requirements under section 20 of the Act in relation to qualifying long-term agreements, such as these, where it is satisfied that it is reasonable to dispense with those requirements. The Tribunal, therefore, is granted a wide discretion under this section.

Decision

4. The hearing in this matter took place on 29 April 2010. The Applicant was represented by Mr Peters of Counsel. None of the Respondents attended nor were they represented.
5. The evidence relied on in support of this application is set out in the witness statement of Mr Holt dated 16 February 2010 who is a Business Manager employed by the Applicant within the Engineering and Design Service and responsible for directing and managing professional staff engaged in the delivery of engineering services, which includes the Energy Management

Unit. His witness statement sets out at length the current method used by the Applicant for the procurement of electricity to maintain best value.

6. Mr Peters pointed out to the Tribunal that the Applicant had made a virtually identical application in relation to the supply of gas to 1,415 residential leaseholders and that application had been granted in an earlier decision dated 2-June 2009 (LON/00BJ/LDC/2009/0021) ("the earlier decision").
7. In the previous application, Mr Holt's evidence regarding the procurement of gas under a long-term qualifying agreement with "a professional buying organisation" called LASER was substantially identical to his evidence in this application. His evidence was succinctly and clearly set out in paragraph 6 to 1-1 of the earlier decision. It is not intended, nor does it serve any useful purpose, to repeat Mr Holt's evidence again here in any detail and the earlier decision should be read together with this decision in this respect.
8. In short, Mr Holt set out the fluctuations that have taken place in the UK fuel market together with possible reasons for this occurrence. The consequence of this volatility in the energy market is that energy suppliers have adopted the practice of submitting prices on the basis that they can be withdrawn at short notice thereby avoiding the risk of incurring financial loss. In reality, the window of opportunity could be only a few hours. Therefore, it was necessary for the Applicant to maintain as flexible a procurement practice is possible with competitive tenders being sought on a fixed-price basis. The Director of Technical Services currently has delegated authority to accept energy tenders within one day of receipt of prices to enable a rapid decision to be made. Invariably, the lowest priced tender is accepted.
9. Mr Holt stated that, with the increasingly volatile energy market, the window of opportunity for securing the most advantageous price from the period between the fixing of a new contract and the renewal date may diminish. Flexible procurement allows for varying amounts of energy to be bought in "clips" over a longer time period than would otherwise be normally available and because the process is managed by a major energy consortium dealing in

bulk quantity purchases for a large number of other local authorities, the potential for savings and best value are maximised. It was intended that the purchasing-body should, again, be LASER in this instance by entering into an agreement with it for a term of two years commencing from 1 October 2010. However, this date is subject to the proviso that the Applicant enters into the agreement in a timely way during the six months preceding the intended start date. It is primarily for this reason that the Applicant seeks dispensation from the requirement to carry out statutory consultation in relation to the proposed agreement with LASER.

10. At the hearing, the Tribunal informed the Applicant that the application was granted. The purpose of this Decision is to confirm the position. The Tribunal's primary reasons for granting the application are:

- (a) that the Applicant had sufficiently publicised the application prior to the hearing and it was unopposed.
- (b) the virtually identical application regarding the contract for the purchase of gas supplies had been granted in the earlier decision on virtually identical grounds. The Tribunal saw no material distinction between that application and this one. To this extent, the reasons for granting the previous application at paragraph 13 of the earlier decision, are repeated and relied on here.
- (c) the Tribunal accepted the evidence of Mr Holt that, by entering into the agreement with LASER, savings of approximately 4% can be achieved for the electricity contracts.

11. Accordingly, the Tribunal makes an order dispensing with the consultation requirements of section 20 of the Act for the purpose of entering into an agreement with LASER for the purchase and supply of electricity under the electricity contracts. This dispensation will apply until 1 October 2012.

Dated the day of June 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, AS AMENDED – SECTION 20ZA

REFERENCE: LON/OOBJ/LDC/2010/0017

Properties: Various leasehold properties in London Borough of Wandsworth

Applicant: The London Borough of Wandsworth

Respondents: The Leasehold Owners of 13,792 Properties in the London Borough of Wandsworth

Appearances: Miss J Oscroft of Counsel
Miss C Swinton, Trainee Solicitor, of Sharpe Pritchard, Solicitors
Mrs E Parrette, Leasehold Services Manager
Mr R Holt, Deputy Head of Design Service
Miss J Andrew, Energy Manager (observer)

For the Applicant

No appearances

For the Respondents

Date of hearing: 22 August 2012

Date of Tribunal's Decision: 22 August 2012

Members of the Tribunal: Mrs J S L Goulden JP
Mr T N Johnson FRICS

REFERENCE: LON/00BJ/LDC/2010/0017

PROPERTY: VARIOUS PROPERTIES IN LONDON BOROUGH OF WANDSWORTH

Background

1. The Tribunal was dealing with an application by the Applicant landlord, The London Borough of Wandsworth dated 31 May 2012 and received by the Tribunal on 1 June 2012 under S20ZA of the Landlord and Tenant Act 1985, as amended ("the Act") for dispensation of all or any of the consultation requirements provided for by S20 of the Act.

2. The properties are described in the application as "*various types of properties across the borough including flats in tower blocks and low rise blocks , maisonettes in low rise blocks and some houses. Studio to five bedroom units*". It was also stated that 13,792 leaseholders in the London Borough of Wandsworth were affected by the electricity contract and, of that number, 1,021 leaseholders were also affected by the gas contract. A list of individual addresses and affected leaseholders was attached to the application. The Respondents are the affected leaseholders. There were 5 specimen forms of lease, all containing similar clauses. The lease did not provide for landlord's costs of proceedings before the Tribunal to be included on the service charge account.

3. The application described the qualifying works as follows: "*The Council is seeking a rolling dispensation from the consultation requirements of S20 of the Landlord and Tenant Act 1985 which apply to the procurement of energy contracts for gas and electricity. The Council is already part of the framework agreement to supply gas and electricity. The contracts are due to be renewed in October 2012 and the dispensation already given by the Tribunal in June 2009 and June 2010 must also be extended. The Council will continue to be a partner in a framework agreement which has been developed by Local Authority South East Region (LASER) which is part of Kent County Council.*"

4. Dispensation of all or any of the consultation requirements was requested in the application because "*...given that the fuel procurement process in an increasingly volatile market is such that suppliers submit prices upon the basis that they can be withdrawn at short notice, offers may be available for a few hours only. In order to obtain the best electricity and gas prices the Applicant needs to be able to act within 3 hours. In the circumstances, it is impractical and impossible for the Applicant to comply with the consultation requirements*".

5. As to consultation, it was stated in the application "*No consultation has yet been carried out. The Applicant will arrange four consultation meetings (two in the working day and two in the early evening), one of each will be arranged in two locations in the Borough when the documents will be available for inspection and Council staff will attend to answer any queries. These meetings will be advertised on the Council's website, and a letter will be sent to all affected leaseholders advising them of the meetings and that all documents are available on request*".

Inspection

6. No request was made from any party for the Tribunal to inspect the property and, in view of the issues raised, the Tribunal did not consider that an inspection at this stage would be of assistance, and would be a disproportionate burden on the public purse.

Hearing

7. The hearing took place on 22 August 2012. The Applicant was represented by Miss J Oscroft of Counsel and Miss C Swinton, Trainee Solicitor, of Sharpe Pritchard Solicitors. Evidence on behalf of the Applicant was provided by Mrs E Parrette, Leasehold Services Manager and Mr R Holt, Deputy Head of Design Service. Miss J Andrew, Energy Manager, observed. Miss Oscroft provided a skeleton argument. None of the Respondents appeared or were represented, although a witness statement from one of the leaseholders was provided and is referred to below in the body of this Decision.

8. There were no appearances for or on behalf of any of the Respondents.

9. The salient points of the evidence under the S20ZA application and the Tribunal's determination are set out below.

The Applicant's case

10. Evidence on behalf of the Applicant was provided by Mrs E Parrette, Leasehold Services Manager, Housing Management Services Team. She referred to her witness statement dated 24 July 2012 and confirmed that she did not wish to amend the same.

11. Mrs Parrette went through the steps which she had taken to ensure that the leaseholders were fully aware of what the Council proposed. This included sending a letter, dated 26 June 2012 to all 13,792 leaseholders who would be affected, detailing the proposals and setting out arrangements for "drop in" meetings to be held either in the daytime or in the early evening to discuss the application with Council officers and view the relevant documentation. The dates on which these meetings were to be held were 3, 6, 9 and 10 July 2012 at either Battersea Library or Wandsworth Town Library. Mrs Parrette said that some 61 leaseholders in total had attended the meetings and many leaseholders had telephoned her for further information. The letter of 26 June 2012 also gave information as to hearing of this matter before the Tribunal.

12. Mrs Parrette said in her witness statement inter alia "*At all the meetings, attendees were offered a 'pack' containing copies of the application and supporting documents to take home and the majority of the residents who attended took this. I was present at all of the meetings to answer any queries that leaseholders might have had, together with Mr Holt or his colleague, Ian Almeida. A verbal explanation was provided to each leaseholder who attended and any specific questions were responded to.....overall the residents were happy with the application, and several completed the form attached (sic) the directions.....several leaseholders requested electronic*

copies of the application which were subsequently sent to them by email". A list of telephone calls (about 85) was provided within the bundle.

13. Evidence on behalf of the Applicant was also given by Mr R Holt, Deputy Head of the Design Service of the Council, being part of its Finance Directorate. Mr Holt was responsible for directing and managing professional staff engaged in the delivery of engineering services including the Energy Management Unit. He referred to his witness statement dated 18 May 2012 and confirmed that he did not wish to amend the same.

14. Mr Holt said that the Applicant had made two applications to the Tribunal in March 2009 and February 2012 seeking dispensation under S20ZA of the Act in respect of gas for communal heating and hot water supplies and electricity supplies, and in both cases dispensation had been granted. Copies of those decisions were supplied. Gas and electricity are now part of the same agreement and therefore only one application to the Tribunal was now required.

15. Mr Holt said that within the current framework term for both gas and electricity, flexible agreements as referred to above would end on 30 September 2012 and were due to be renewed for the period October 2012 to September 2016.

16. In his witness statement, Mr Holt stated, *inter alia*, "energy markets are both complex and volatile, making them liable to sudden price fluctuations which are often linked to real or perceived threats to supply that can significantly vary prices on a daily basis. The majority of the energy price payable is market related. Therefore the key variant and influencing factor is the wholesale price. Because of its volatility, the energy market cannot be index linked and true cost savings accrue directly from a lower absolute outlay. Given the nature of the energy market and influencing factors such as the increasing move to renewables, carbon reduction measures, taxation, reduction in generating capacity and increased reliance on energy imports it is very unlikely that the opportunity for any absolute cost reduction will occur on a consistent basis. Currently it may be feasible to achieve "one offs" from a single year move from a high price to a lower rate but this would be short term and unsustainable". Mr Holt said that the savings made to date had been substantial.

17. Mr Holt gave further information in respect of the gas supply for communal heating and water supplies and also electricity and also as to the framework agreement.

18. Mr Holt acknowledged that the Council was required to give notice of its intention to make an application to the Tribunal to the leaseholders affected, and confirmed Mrs Perrette's evidence in this respect.

The Respondents' case

19. As stated above, none of the Respondents appeared or were represented. A witness statement from Ms J Poczynajilo, one of the affected leaseholders, was provided and was dated 13 August 2012.

20. Ms Poczynajilo objected to the application for dispensation. She said, inter alia that the Council had delegated its authority to enter into contract for supply to LASER CPB (Local Authority South East Region Central Purchasing Body) and had no control over the choice of supplier. She said that LASER CPB had limited energy suppliers for contracts commencing 1 October 2012 and if the Council signed up for another 4 year contract "it means that it agrees to take supply from Total Gas and Power for gas and from Npower for electricity because this (sic) are the only two suppliers that LASER CPB deals with.....In 2011 Total Gas and Power than (sic) had more (sic) 24% of the supply of gas market. And Npower in 2011 had more than 18% of the supply of electricity market. Maybe a supply of gas and electricity from a supplier with a less market share would be more beneficial because of more personalised service better tailored to the Council needs. Once a reference price has been agreed for a one year supply of chunk of energy on PLA (Purchase in Advance) it cannot be changed even if the price falls afterwards. It is a flexible locked in contract. Therefore it will be a best price available on a day of purchase same like on a fixed contract".

The Tribunal's determination

21. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with. Dispensation is dealt with by S 20ZA of the Act which provides:-

"Where an application is made to a leasehold valuation 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"

22. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

- 1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –**
- (a) to each tenant; and**
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.**
- (2) The notice shall –**
- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**

- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure
- (e) specify-
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the period on which the relevant period ends.

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

23. The scheme of the consultation requirements are designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and their purpose.

24. The Tribunal has considered the issues with care and found the evidence of Mrs Perrette and Mr Holt, supported by the documentary evidence within the bundle and handed in at the hearing, to be persuasive.

25. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed. The leaseholders had been clearly notified of the proposals and the reasons for the proposals in the Applicant's letter to each leaseholder of 26 June 2012. The leaseholders had been given every opportunity to discuss the proposals at meetings held in different venues and at different times. The leaseholders who had attended those meetings were given information packs (which could also be sent by electronic means, if preferred). It is noted that, notwithstanding the fact that all 13,792 leaseholders had been formally notified of the meetings, only 61 leaseholders in total had attended.

26. The financial burden on the leaseholders is potentially onerous but in this particular case, the Tribunal determines that the leaseholders would not be substantially prejudiced by the Applicant's failure to consult fully or at all. In

particular, the Tribunal notes that only one objection has been received from or on behalf of any of the Respondents. It is noted from the bundle that twelve leaseholders had completed forms supporting the landlord's application, and Mrs Perrette confirmed in oral evidence that she had received no objections from other leaseholders.

27. On that basis, the Tribunal is satisfied that it is reasonable to dispense with consultation requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.

It should be noted that in making its determination, and as stated in paragraph 5 of the Tribunal's Directions of 13 June 2012, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.

CHAIRMAN.....

DATE.....22 August .2012.....