

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 organisation 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.

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 11 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 Perrette 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 Perrette 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 Perrette 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 PIA (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.....



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

Case reference : **LON/OOBJ/LDC/2016/0051**

Applicant : **London Borough of Wandsworth**

Representative : **Ms E Dring of Counsel
Instructed by Sharp Pritchard,
Solicitors and Parliamentary Agents**

Respondents : **Leaseholder owners of 14,082 properties**

Representative : **None**

Type of application : **for the dispensation of all or any of the
consultation requirements provided for by
section 20 of the Landlord and Tenant Act
1985**

Tribunal members : **Judge J E Guest
Mr F Coffey FRICS
Mr A Ring**

Date of hearing : **25/08/2016**

Place of hearing : **10 Alfred Place, London WC1E 7LR**

Date of decision : **07/09/2016**

DECISION

The Tribunal dispenses with the requirement to consult under section 20ZA of the Landlord and Tenant Act 1985 in relation to the renewal of the agreement with LASER for a four year period with effect from 01/10/2016.

The application

1. On 24/05/2016, the Applicant made an application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements in relation to an intended renewal of an agreement with an organisation called LASER (Local Authority South East Region) for the supply gas and electricity for 4 year period from 01/10/2016. A witness statement dated 24/05/2016 by the Applicant's Head of the Design Service, Hussein El Bahrawy, was filed in support of the application.
2. The Applicant had previously made applications under section 20ZA in relation to earlier agreements with LASER that were granted by the Tribunal on 02/06/2009 (in relation to gas only), in June 2010 (electricity only) and on 22/08/2012 (gas and electricity).
3. The current application was first considered by the Tribunal on 14/06/2016 when directions were made. In compliance with those directions, the Applicant: (a) notified all leaseholders of the application by way of a letter dated 17/06/2016 (with a further letter dated 27/06/2016 stating that copies of the application and supporting documents would be provided on request); (b) produced the documents on its website and (c) held four separate public meetings (during the day and in the evenings at Battersea Library and the Town Hall). A witness statement dated 18/07/2016 by the Applicant's Leasehold Services Manager, Elizabeth Parrette, set out the steps taken by the Applicant to notify leaseholders of the application and the responses received.

The leaseholders' responses

4. A relatively small number of leaseholders objected to the application. Mr A Mil wrote a statement on 06/07/2016 stating that the dispensation was "not a democratic means of addressing the matter". Ms H Shroot wrote a statement on 08/07/2016 in which she said, amongst other things, that the consultation requirements were "safer for the tenants and show best value for money". Ms J Poczna jlo signed a statement on 07/07/2016 exhibiting her service charge statements for the period from 2010/11 to 2015/16 and expressing concern that electricity costs were increasing (£25.09 for 2010/11 to an estimated £49.00 for 2015/16).
5. Mr M Tyler attended one of the public meetings and he completed a response form on 08/07/2016 indicating that he opposed the application. He later provided a statement in a telephone call with the Applicant's solicitor on 24/08/2016, which he subsequently amended in a further telephone call on the day of the hearing.
6. A total of 13 response forms were completed at the meetings and exhibited to the witness statement of Ms Parrette. Another two forms were received directly by the Tribunal. Other than Mr Tyler, no leaseholder requested an oral hearing.

7. On 27/07/2016, the Tribunal made further directions. Directions were made for an oral hearing as Mr Tyler requested this. The Tribunal also directed that the Applicant provide evidence to compare the cost of gas and electricity under the LASER agreement to the costs if purchased directly from the energy suppliers. This was because the Applicant's Mr R Holt indicated that a monitoring exercise would be carried out when the Tribunal granted the first application in 2009. A witness statement dated 08/08/2016 by Ian Almeida, the Applicant's Project Officer (Energy Management) was submitted in response to this direction. This stated that Mr Holt had retired in March 2016 and, for various reasons, the Applicant was unable to provide details of any monitoring exercise, although some comparative evidence was provided.

The hearing

8. An oral hearing was held on 25/08/2016. Counsel, Ms E Dring, represented the Applicant. Mr El Bahrawy and Mr Almeida both gave oral evidence. Ms Parrette did not attend (the Tribunal having listed the hearing on a date that the Applicant had specifically requested be avoided) so Mr P Dwyer, the Applicant's Leasehold and Procurement Manager, also gave oral evidence.
9. The Tribunal heard that the agreement enables the Applicant - in conjunction with 39 other local authorities - to bulk buy gas and electricity through LASER. The Applicant prefers this method of procurement as it considers that this results in a saving. The Tribunal was informed that LASER is an expert body that in essence 'plays the market' to obtain what is, on the available evidence, the best wholesale price. LASER bulk buys energy when it appears that the market is offering the best deal and, as offers can change very quickly (even hourly), it is not possible for the Applicant to consult with leaseholders.
10. The Applicant produced documentary evidence that the gas costs obtained by the Applicant during the period October 2009 to January 2012 were cheaper when compared with 'Big Six' domestic energy suppliers. The Applicant's Finance report for 2010/11 stated that there was a 10-15% saving for gas and electricity, the Finance Report for 2011/12 stated that there was a saving of 6-7% against the benchmark price and the Report for 2012/13 referred to a saving of 3-4.8% against the average market price. Information provided to the Applicant by LASER showed an average saving of 29% for gas and 13% for electricity against the rates published by the former Department of Energy and Climate Change (DECC). The Applicant also produced evidence regarding the actual charges for the period October 2015 to October 2016 against DECC's published rates, which showed a saving of 41.8% for gas and 19.4% for electricity. Although required by the directions made on 27/07/2016, the Tribunal accepted that comparisons with the domestic market were not appropriate, as the Applicant is unable to purchase gas and electricity on anything other than a commercial basis.
11. Mr Almeida told the Tribunal that he was present at the meetings when forms were completed by 13 leaseholders. Mr Almeida explained that the

leaseholders thought that they were consenting to the application, rather than opposing it.

12. The Applicant did not address Ms Poczynajlo's concerns in its written evidence, but Mr Dwyer said in his oral evidence that the increases in her electricity charges may be for reasons unrelated to the method of procurement. Mr Dwyer gave examples, such as a service charge year including only 3 quarterly bills and another including 5 quarterly bills, an increase in usage and an increase in facilities.
13. Mr Tyler attended the hearing at the conclusion of the Applicant's oral evidence. Mr Tyler made oral submissions to the Tribunal. Mr Tyler appeared to accept that it was very difficult for the Applicant to consult on arrangement with LASER.

The law

14. Section 20ZA(2) of the 1985 defines a 'qualifying long term agreement' as an agreement entered into by a landlord for a term of more than 12 months.
15. Under section 20(1), the service charge a landlord can recover under such an agreement is limited unless the landlord has complied with the consultation requirements set out in Schedule 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003.
16. A landlord may make an application under section 20ZA(1) to dispense with some or all of the consultation requirements and the Tribunal may make the determination if satisfied that it is reasonable.
17. The Supreme Court decision in *Daejan Investments Ltd v Benson and others [2013] UKSC 14* is the leading authority on dispensation and further guidance was given by the Upper Tribunal in the case of *OM Property Management Limited [2014] UKUT 0009*. In summary, the burden rests on a leaseholder to establish the existence of real prejudice resulting from the landlord's failure to comply with the consultation requirements and, if such a prejudice has been suffered, the landlord may be required to effectively compensate by reducing the amount of service charges claimed.

Reasons of the Tribunal's decision

18. The renewal of the agreement with LASER constitutes a 'qualifying long term agreement' as it is for a period of 4 years.
18. The Applicant – like many other local authorities – wishes to purchase energy through a conglomerate that is then able to obtain deals through the wholesale market. It is a matter for the Applicant as to whether it wishes to procure services in such a way. The likely alternative would be for the Applicant to purchase gas and electricity annually at a fixed price, which would not require consultation in any event, as the agreement would be for a period of less than 12 months.

19. All leaseholders were notified of the application. The application and evidence in support was made available, including on the Applicant's website. Four separate public meetings were held. Despite all this publicity, very few leaseholders responded and even fewer objected to the application (less than 0.03% objected). Of that small number, no actual evidence was produced to suggest that the procurement of gas and electricity through a central purchasing body was not appropriate.
20. The Tribunal was somewhat surprised to find that, given that this method of energy procurement has been adopted by the Applicant since 2009, the Applicant had difficulty in producing any analysis of its own to demonstrate the savings achieved over this period by comparison with other procurement options. At the very least, such an analysis may be helpful in addressing the perfectly valid point raised by Ms Pocznyajlo that, from a leaseholder's perspective, electricity costs had increased year on year to the point that they had almost doubled in 5 years. In any future application under section 20ZA, the Tribunal would expect to see some evidence that the Applicant has monitored the benefits of the arrangement with LASER. Also, any leaseholder's specific concerns raised in objections should be addressed.
21. The grant of dispensation does not affect a leaseholder's right to challenge the gas and electricity charges sought through their service charges. The dispensation only relates to the consultation requirements. A leaseholder who considers that the charges have not reasonably been incurred may still make an application to the Tribunal for a determination under section 27A of the 1985 Act.

Dated: 07/09/2016

Judge J E Guest

Cost Avoidance - LASER Flexible Energy Procurement Framework

LASER's current flexible frameworks have achieved significant cost avoidance for **LB Wandsworth**, as summarised in the following table:

Description	Avoided Cost £/pa
Lower Supplier Management Fees - reduced fees from your gas and electricity suppliers compared to buying as a stand-alone customer. This has been shown to reduce delivered energy costs by ~4% pa.	£321,975
Shaping Benefits - Aggregating the volumes of multiple customers flattens the overall usage profile, allowing our traders to purchase more as baseload (24/7 energy) and less as peak-load (7am - 7pm energy, which is more expensive).	£49,474
Entire Market Pricing - When LASER submits a bid to buy a block of energy, our suppliers are compelled to put this bid into the open market. This means we receive the lowest price anyone in the entire market is prepared to offer, not just the price our own supplier will sell at.	£24,448
Flexibility of Trading - our large energy purchase volumes mean we can buy larger blocks of energy over the market, which come at a discount to buying smaller blocks of energy.	£9,755
Volume Tolerance - penalty clauses appear in most energy supply contracts when usage falls outside $\pm 10\%$ of a customer's contracted usage. LASER's volume tolerances apply at the aggregated customer level (rather than individual customer level). This minimises the risk of volume tolerance penalty charges being incurred. To date, no LASER customer has incurred a penalty charge for using more or less energy than predicted.	£4,106
LASER's track record in monitoring the market and buying at lower than average market prices. This calculation compares the prices achieved by LASER for the period Oct 13 - Sep 17 with the average market price (the average traded price of energy in the 2-years in advance of the supply start date). Savings are annualised.	£93,985
Transparency of pricing – LASER's flexible frameworks require the suppliers to give a full and transparent breakdown of all energy and non-energy cost components included in contract pricing prior to opening bills being issued. LASER then validates this breakdown, at customer account level, to ensure all cost components are correctly calculated. This typically reduces delivered energy prices by 0.75% per annum	£60,370

In total, the key cost avoidance benefits above **have reduced LB Wandsworth's energy spend by £564.1k per annum.**

Electricity prices

Dates	E D F prices (Standard variable)										L A S E R P R I C E S	
	R A T E 1		R A T E 1		E C O N O M Y 7			E C O N O M Y 7			Average price for period includes standing charge but not VAT	
	Published prices (includes VAT 5%)		excludes VAT-calculated		Published prices (includes VAT 5%)			excludes VAT-calculated				
	standing charge: p/kWh	p/kWh	standing charge: p/kWh	p/day	day p/kWh	night p/kWh	standing charge: p/day	day p/kWh	night p/kWh	standing charge: p/day	p/kWh	Period
04/10/2016	14.96	18.9	14.248	18.000	18.3	6.75	18.9	17.429	6.429	18.000	10.69 to 12.5	1/10/16 to 30/9/17
04/04/2017	16.31	18.9	15.533	18.000	19.72	7.27	18.9	18.781	6.924	18.000		
03/10/2017	18.46	18.9	17.581	18.000	22.93	8.44	18.9	21.838	8.038	18.000	10.82 to 12.41	1/10/17 to 30/9/18
03/04/2018	18.46	18.9	17.581	18.000	22.93	8.44	18.9	21.838	8.038	18.000		
01/10/2018	20.36	23.28	19.390	22.171	25.31	9.31	23.28	24.105	8.867	22.171	12.49 to 14.23	1/10/18 to 30/9/19
01/04/2019	19.16	27.32	18.248	26.019	22.76	10.83	27.4	21.676	10.314	26.095		
01/10/2019	18.39	27.32	17.514	26.019	21.39	10.83	27.4	20.371	10.314	26.095	13.88 to 15.72	1/10/19 to 30/9/20

Notes:

Issues:

- 1) Laser meet tendering requirements (OJEU); we don't have the expertise.
- 2) Communal energy supplies in Industrial & Commercial market rather than Domestic.

Prices:

Rate 1: EDF's p/kWh is less than Laser's. E.g. for 1/10/19, EDF's is 17.514p/kWh and Laser's is 13.88 to 15.72p/kWh.

Economy 7 : Prices are as given. It is very difficult to compare prices directly because of the split rate. We have few Economy 7 accounts.

They are more likely to be Rate 13 (Evening & Weekend) or half-hourly rates.

Gas prices

Dates

Dates	EDF published prices (includes VAT 5%)		EDF calculated prices (excludes VAT-calculated)		LASER prices Average price for period includes standing charge but not VAT	
	p/kWh	Standing charge p/day	p/kWh	Standing charge p/day	p/kWh	Period
04/10/2016	4.158	26.25	3.960	25.000	2.15 to 2.48	1/10/16 to 30/9/17
04/04/2017	3.917	26.25	3.730	25.000		
03/10/2017	4.216	26.25	4.015	25.000	2.1 to 2.45	1/10/17 to 30/9/18
03/04/2018	4.216	26.25	4.015	25.000		
01/10/2018	4.687	26.25	4.464	25.000	2.6 to 2.97	1/10/18 to 30/9/19
01/04/2019	4.472	31.07	4.259	29.590		
01/10/2019	3.992	31.07	3.802	29.590	2.69 to 2.99	1/10/19 to 30/9/20

Notes: EDF prices are "standard variable"