



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

Case Reference : **BIR/00CN/LDC/2024/0003**

Properties : **Various Properties in the ownership of Nehemiah United Churches Housing Association as Landlord**

Applicant : **Nehemiah United Churches Housing Association**

Representative : **Anthony Collins Solicitors LLP
(JW2.022668.0159
Joanne Wright)**

Respondents : **The Lessees of Various Properties in the ownership of Nehemiah United Churches Housing Association as Landlord**

Type of Application : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements.**

Tribunal Member : **V Ward BSc Hons FRICS – Regional Surveyor**

Date of Directions : **15 April 2024**

DIRECTIONS

IMPORTANT INFORMATION

The parties should note in particular that:

- These Directions are intended to assist the parties and the Tribunal in dealing with the application swiftly and economically. They are formal Orders and **must be complied with**. Failure to comply may result in the Tribunal refusing to hear the defaulting party's case and ordering that party to pay costs.
- Whenever you send a letter or email to the Tribunal you must also send a copy to the other parties and note this on the letter or email.
- If the Applicant fails to comply with these directions the Tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").
- If a Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9 (7) and (8) of the 2013 Rules.
- If a party wants to alter the directions or propose new ones, they must first seek the agreement of the other party and then apply in writing to the Tribunal.
- The Tribunal's address is:

First-tier Tribunal Property Chamber (Residential Property)
Midlands Region
Centre City Tower
5 – 7 Hill Street
Birmingham
B5 4UU

0121 600 7888

Email: rpmidland@justice.gov.uk.

Background

1. By an application received by the Tribunal on 28 March 2024, the Applicant Landlord sought retrospective dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution by way of a “qualifying long term agreement” unless the consultation requirements have been met or dispensation from the same has been granted. A qualifying long term agreement is an agreement for more than 12 months where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100. In addition, there is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
3. The application relates to 522 properties in the West Midlands, of which the Applicant is the Landlord.
4. This application relates to Qualifying Long Term Agreements (QLTAs). The Applicant states the following within the application form:

The Applicant seeks a retrospective dispensation in relation to QLTAs already entered into for the purchase of gas and electricity, the costs of which are charged to Respondents through their variable service charge. While the QLTAs have already been entered into, the Applicant seeks an expedited decision to enable it to pass on costs to affected tenants above £100 per annum as soon as possible, assuming the dispensation is granted.

Further details are given in the application form and accompanying documents.

5. The justification for seeking dispensation is given as follows:

The Applicant seeks dispensation from all of the consultation requirements in section 20 because the Respondents have not suffered a prejudice as a result of the Applicant's failure to follow the consultation requirements.

The Applicant is provided by their broker, The Monarch Partnership Ltd, with a bespoke energy procurement service to enable them to manage energy costs by seeking out the most competitive prices. Several brokers act in this capacity for a number of private registered providers. Tenants have benefitted from the lower prices that were available when the Applicant acted to lock in 2 year deals, rather than 1 year deals, in May 2022 in respect of the 2 electricity contracts, and in October 2022 in respect of the gas contract.

The Applicant would not have been able to secure those costs savings for the benefit of their tenants if it had carried out a section 20 consultation, since energy is a commodity and trades on the energy markets. With prices changing minute by minute, competitive quotations for energy are only held for a matter of hours rather than the full 60 days (two 30-day periods) needed to consult with tenants in accordance with section 20. The energy market has been extremely volatile, largely because of the ongoing Russia/Ukraine war and the effect that has had on supply to Europe. Actively monitoring the markets and purchasing energy in line with the Applicant's objective to keep a low and stable cost base and hence service charge for residents, relies on a strategic view of the market and having expert guidance to purchase energy as the market presents opportunity.

In addition, the Applicant was unable to provide estimated costs to tenants which would be required if it was to comply fully with the Service Charges (Consultation Requirements) (England) Regulations 2003. Since the electricity and gas was purchased as and when a competitive price was identified by their broker on the wholesale energy market, the Applicant was not able to advise tenants of the cost in advance of contract placement.

Even if practical (which it was not for those reasons), had a full consultation gone ahead, it would have been impossible for the Respondents to show that a 1 year deal would have benefitted them more than a 2 year deal at the time of contract placement. This is because prices that may become available at a specified point in the future were unknown; hence the Applicant acted on the best information that was available at the time, on the advice of its broker.

6. **The only issue for the Tribunal to determine under these applications is whether or not it is reasonable to dispense with the statutory consultation requirements.**

These applications do not concern the issue of whether any service charge costs will be reasonable or payable.

DIRECTIONS

7. **By 24 May 2024, the Applicant** shall write to each of the Respondents concerned by email, hand delivery or first-class post, setting out the following:
 - (a) Informing them of the application;
 - (b) Advising them that a copy of the application (with all personal leaseholder details deleted), statement of case, supporting documents and a copy of these directions will be available on the Applicant's website, advising them of the URL address, and notifying them that any response to the application should be made by 21 June 2024 using the Reply Form at the end of these Directions;
 - (c) Informing the Respondents that if they wish to receive a printed copy of the application and these Directions they should write to the Applicant (email: joanne.wright@anthonycollins.com) by **7 June 2024**, who will then send printed copies (any personal leaseholder details to be deleted);
 - (d) Advise the leaseholders that as the application progresses additional documents will be added to the website, including the final decision of the tribunal.
 - **Confirm to the Tribunal by email that this has been done and state the date(s) on which this was done.**
 - Inform the Tribunal of the names of the Respondents (if any) who have already informed the Applicant that they object to the application.
8. **By 21 June 2024, the Respondents** who oppose the application must:
 - Complete the attached reply form and send it by email to the Tribunal and the Applicant; and
 - Send to the Applicant, by email or by post, a statement in response to the application with a copy of the reply form. They should send with their statement copies of any documents upon which they wish to rely. A copy of any statement and documents sent to the Applicant must also be sent to the Tribunal (by email to rpmidland@justice.gov.uk)
9. **The Applicant must reply to any objection by 5 July 2024** which must be sent to the Respondent who objected and the Tribunal (by email to rpmidland@justice.gov.uk).

10. **The Applicant must by 26 July 2024:**

- Prepare a digital, indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application, containing all of the documents on which the landlords rely, including the application form, these and any subsequent directions, copies of any replies and/or observations from the leaseholders and any relevant correspondence with the Tribunal;
- Upload a copy of the bundle to their website;
- Write to each of the leaseholders who have sent a reply form to oppose the application, by email and/or post, providing them with a link to the uploaded bundle or, if they request one, a paper copy of the bundle;
- Provide to the Tribunal a copy of the bundle (by email to rpmidland@justice.gov.uk)
- Provide to the Tribunal **only**, a representative sample of the leases of the properties falling within this application.
- Provide to the Tribunal, stamped addressed envelopes for all Respondents who have objected and or returned reply forms with postage for a document of approximately 20 pages.

HEARING

17. The Applicant has indicated that they would be content with a paper determination to which the Tribunal at this stage agrees. If any Respondent requires an oral hearing, they are to advise the Tribunal and the Applicant when returning the reply form.

DECISION

18. The Tribunal will send a copy of its eventual decision on dispensation to the representative of every represented leaseholder and to any unrepresented leaseholders, who have completed and returned the reply form attached to these directions.
19. Furthermore, the Applicant shall place a copy of the Tribunal's eventual decision on dispensation together with an explanation of the leaseholders' appeal rights on their website within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on their home page. In this way, leaseholders who have not returned the reply form

may view the Tribunal's eventual decision on dispensation and their appeal rights on the Applicant's website.

REPLY FORM FOR RESPONDENTS

Case References:

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Properties: Various Properties in the ownership of Nehemiah United Churches Housing Association as Landlord

Please return this form to the Tribunal at the latest by 21 June 2024 preferably by email.

Address:

Midland Residential Property First-tier Tribunal HMCTS 13th Floor, Centre City Tower,
5-7 Hill Street, Birmingham, B5 4UU.

Email: rpmidland@justice.gov.uk

and send a copy to the Applicant:

Anthony Collins Solicitors LLP 134 Edmund Street, Birmingham, B3 2ES

Ref: JW2.022668.0159

Email: joanne.wright@anthonycollins.com

Please complete one answer only in each of section 1 and 2.

	Yes
1. I/We support the application for dispensation from full consultation:	<input type="checkbox"/>
OR I/We do not support the application and object to dispensation being granted. Our statement of reasons is attached.	<input type="checkbox"/>

	Yes
2. I/We agree that the Tribunal may decide the matter on the basis of written representations only (no hearing):	<input type="checkbox"/>
OR I/We wish the Tribunal to hold a hearing.	<input type="checkbox"/>

Date:

Print Name:

Signed:

Address:.....

Telephone numbers: /

Email address: