



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

**Case Reference** : CHI/ 00HE/LDC/2020/0016

**Property** : Various properties in Hampshire and South West England

**Applicant** : Aster Group

**Representative** : Capsticks Solicitors

**Respondents** : The Lessees

**Representative** : -

**Type of Application** : To dispense with the requirement to consult lessees about major works

**Tribunal Member(s)** : Mr W H Gater FRICS MCI Arb

**Date of Hearing** : Paper Determination 21 May 2020

**Date of Decision** : 21 May 2020

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DECISION

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## **The Application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that it wishes to seek dispensation from consultation in respect of the works, namely to enter into fixed term 3-year contracts for the supply of gas to communal boilers and for the supply of electricity to all communal areas effective from 1 April 2019
3. The reason for the application is that energy supply markets will not hold price offers open for a sufficient time to allow full consultation compliance with consultation requirements.
4. The Application for dispensation was received on 21 February 2020.
5. On 9 March the Tribunal directed the Applicant on receipt of the directions to send them, together with a copy of the application, to each Respondent. On 24 March the Applicant confirmed to the Tribunal that this had been done.
6. The Applicant attempted to serve the Tribunal by post with a hearing bundle of documents on 27 April 2020. Due to the current health crisis the Tribunal office was closed and unable to receive post. The Tribunal is grateful to the Applicant for subsequently submitting the bundle electronically on 4 May 2020 and accepts service.
7. The Tribunal received a response from one leaseholder, Maria Michalakopoulou who objected to the Application, but agreed that the matter could be dealt with by paper determination, having made written representations
8. Respondents were directed to submit response forms to both the Tribunal and the Applicants. The Applicants representatives have confirmed that neither they or their client had received any response forms from the various lessees.
9. Those who failed to respond to directions were removed as Respondents in this case.

## **Determination**

10. The Tribunal found the following facts:
  - a) The Applicant had completed stages 1 and 2 of the statutory consultation procedures in respect of the works, offering a 30 day consultation period for each stage.

- b) Copies of observation received and replies were attached to the application.
  - c) The Applicant engaged a firm of consultants to obtain quotes for gas and electricity supplies several types of contract, including 1,2 and 3-year fixed term contracts with a view to achieving the best price possible.
  - d) It cited market uncertainty due to economic and political issues in expressing its belief that it was in the best interests of the residents to enter into fixed term contracts.
11. The Tribunal notes the written representations from Ms Maria Michalakopoulou. Whilst these views are genuinely held it appears that the issues raised are more appropriate to an application to determine reasonableness of service charges. See 16 below.
  12. The Tribunal has also noted the observations from those who responded in both stages of consultation.
  13. The Supreme Court in *Daejan Investments Ltd v Benson and Ors* [2013] 1 W.L.R. 854 , established the principle that in considering an application under section 20ZA, the tribunal must have regard to the extent to which the tenant has been prejudiced by the failure of the landlord to comply with the Statutory Consultation Requirement.
  14. The Tribunal is satisfied from the facts found that the Applicant could not complete the consultation process because of the nature of the energy supply market and that the steps taken by the Applicant to obtain quotations minimised the risk of prejudice to the Leaseholders. It is clear from the evidence that the Applicant has listened to the views of the leaseholders whilst seeking to obtain energy supplies in the best interests of the residents.
  15. **The Tribunal decides to dispense with the final stage of the consultation process for works because the leaseholders would suffer no relevant prejudice.**
  16. The Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the qualifying works. The Tribunal has made no determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
  17. The Tribunal will send a copy of the decision to Ms Michalakopoulou. The Tribunal asks the Applicant to inform the other leaseholders of this decision by way of noticeboard or other forms of communication.

## **RIGHTS OF APPEAL**

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