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Application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985

Section 20ZA of the Landlord and Tenant Act 1985

It is important that you read the notes below carefully before you complete this form.

This is the correct form to use if you want to ask the Tribunal to dispense with all or any of the consultation requirements set out in section 20 of the Landlord and Tenant Act 1985 and in the Service Charges (Consultation Requirements)(England) Regulations 2003.

A fee is payable for this application (see section 13 for Help with Fees).

Applications should be sent as a Microsoft Word document by **email** to the relevant regional tribunal address shown in the Annex to this form. You must also send by email **the documents listed in section 13 of this form**. If you cannot access email or find someone to assist you in lodging your application by email, then a paper application will be acceptable although there may be a delay in dealing with this. Sending an application on paper will not be suitable in urgent cases.

You can now pay the **the fee (if applicable) by an on-line banking payment or by cheque/postal order enclosed with the application form.**

If you want to be sent online banking payment details by email, please tick this box



Please make sure a copy of the application is served on the other party/parties to the application. If you are unable to serve a copy on the other party/parties, please bring this to the tribunal's attention in the covering email or if sending by post in a covering letter.

Please do not send any other documents. When further evidence is needed, you will be asked to send it in separately.

If you have any questions about how to fill in this form, the fee payable, or the procedures the Tribunal will use please contact the appropriate regional office.

If you are completing this form by hand please use **BLOCK CAPITAL LETTERS**.

1. DETAILS OF APPLICANT(S) (if there are multiple applicants please continue on a separate sheet)

Name:

Capacity:

Address (including postcode):

Address for correspondence (if different from above):

Telephone:

Day: Evening: Mobile:

Email address: Fax:

Representative name and address, and other contact details: Where details of a representative have been given, all correspondence and communications will be with them until the Tribunal is notified that they are no longer acting for you.

Name:

Reference no. (if any)

Address (including postcode):

Telephone: Day: Mobile:

Email address: Fax:

2. ADDRESS (including postcode) of SUBJECT PROPERTY (if not already given)

3. DETAILS OF RESPONDENT (S) the person against whom an applicant seeks determination from the tribunal – this will only be the landlord's managing agent if they are a party to the lease. If there are multiple respondents, please continue on a separate sheet.

Name:

Capacity

Address (including postcode):

Reference no. for correspondence (if any)

Address for correspondence (if different from above):

Telephone:

Day: Evening: Mobile:

Email address: Fax:

Note: If this is an application by a landlord, then usually all tenants liable to pay a service charge for the costs in question should be joined as respondents. If tenants are not joined in this way, the landlord should provide the Tribunal with a list of the names and addresses of service charge payers. If this is not possible or is impractical, then a written explanation must be provided with this application.

If you are the landlord/management company making the application please omit, if known, the telephone/fax numbers and email address of the respondent(s) when completing Box 4 and include them on a separate sheet. This is because the application form may be copied by the tribunal to other appropriate persons (e.g. other service charge paying leaseholders in the building or development).

4. BRIEF DESCRIPTION OF BUILDING (e.g. 2 bedroom flat in purpose built block of 12 flats)

A variety of blocks of flats where there is a Landlord supply for heating and lighting.

5. DETAILS OF LANDLORD (if not already given)

Name:

Address (including postcode):

Reference no. for correspondence (if any)

Telephone:

Day:

Evening:

Mobile:

Email
address:

Fax:

6. DETAILS OF ANY RECOGNISED TENANTS' ASSOCIATION (if known)

Name of
Secretary

None

Address (including postcode):

Telephone:

Day:

Evening:

Mobile:

Email
address:

Fax:

7. DISPENSATION SOUGHT

Applicants may seek a dispensation of all or any of the consultation requirements in respect of either qualifying works or long-term agreements.

Does the application concern qualifying works?

☐ Yes

☒ No

If Yes, have the works started/been carried out?

☐ Yes

☐ No

Does the application concern a qualifying long-term agreement?

☒ Yes

☐ No

If Yes, has the agreement already been entered into?

☐ Yes

☒ No

For each set of qualifying works and/or qualifying long-term agreements please

complete one of the sheets of paper entitled '**GROUND'S FOR SEEKING DISPENSATION**'

8. OTHER APPLICATIONS

Do you know of any other cases involving either: (a) related or similar issues about the management of this property; or (b) the same landlord or tenant or property as in this application?

☐ Yes ☒ No

If Yes, please give details

9. CAN WE DEAL WITH YOUR APPLICATION WITHOUT A HEARING?

If the Tribunal thinks it is appropriate, and all the parties and others notified of their right to attend a hearing consent, it is possible for your application to be dealt with entirely on the basis of written representations and documents and without the need for parties to attend and make oral representations. ('A paper determination').

Please let us know if you would be content with a paper determination if the Tribunal thinks it appropriate.

☒ Yes ☐ No

Note: Even if you have asked for a paper determination the Tribunal may decide that a hearing is necessary. Please complete the remainder of this form on the assumption that a hearing will be held. Where there is to be a hearing, a fee of £200 will become payable by you when you receive notice of the hearing date.

10. TRACK PREFERENCES

We need to decide whether to deal with the case on the Fast Track or the Standard Track (see Guidance Note for an explanation of what a track is). Please let us know which track you think appropriate for this case.

☒ Fast Track
☐ Standard Track

Is there any special reason for urgency in this case?

☒ Yes ☐ No

If Yes, please explain how urgent it is and why:

With the unprecedented increased gas and electricity prices over the last two years, we seek to mitigate some of those price rises for the benefit of our residents by entering into a longer term contract as the energy market has fallen over the last few months. There is still considerable risk and potential volatility in the market, therefore we seek to lock in prices while the market has fallen. Given Energy contract prices cannot be held by the suppliers for longer than a day, we seek to enter into a contract on the same day as the suppliers offer their prices.

We are seeking dispensation in order to lock in the best possible deal before our current contracts come to an end.

The current contracts for Gas and Electricity expire on the 30th September 2024

Note

The Tribunal will normally deal with a case in one of three ways: on paper (see section 10 above) or 'fast track' or 'standard track'. The fast track is designed for cases that need a hearing but are very simple and will not generate a great deal of paperwork or argument. A fast track case will usually be heard within 10 weeks of your application. You should indicate here if you think your case is very simple and can be easily dealt with. The standard track is designed for more complicated cases where there may be numerous issues to be decided or where for example, a lot of documentation is involved. A standard track case may involve the parties being invited to a Case Management Conference which is a meeting at which the steps that need to be taken to bring the case to a final hearing can be discussed.

11. AVAILABILITY

If there are any dates or days we must avoid during the next four months (either for your convenience or the convenience of any expert you may wish to call) please list them here.

Please list the dates on which you will NOT be available:

We can be available on any date

12. VENUE REQUIREMENTS

Please provide details of any special requirements you or anyone who will be coming with you may have (e.g. the use of a wheelchair and/or the presence of a translator):

Applications handled by the London regional office are usually heard in Alfred Place, which is fully wheelchair accessible. Elsewhere, hearings are held in local venues which are not all so accessible and the case officers will find it useful to know if you or anyone you want to come to the hearing with you has any special requirements of this kind.

13. CHECKLIST

Please check that you have completed this form fully. The Tribunal will not process your application until this has been done. Please ensure that the following are enclosed with your application and tick the appropriate box to confirm:

A copy of the lease(s).



A statement that service charge payers have been named as respondents or a list of names and addressess of service charge payers



EITHER

A crossed cheque or postal order made out to HM Courts and Tribunal Service for the application fee of £100 (if applicable) is enclosed. **Please write your name and address on the back of the cheque or postal order. Please also send a paper copy of your application with your cheque or postal order, regardless of whether you have already emailed the application.**



OR

You have ticked the box at the top of this form to say you want the relevant regional tribunal office to send you details on how to pay the application fee of £100 by on-line banking. **The unique payment reference the tribunal office supplies MUST be used when making your on-line banking payment.**

DO NOT send cash under any circumstances. Cash payment will not be accepted.

Please note where there is to be a hearing, a fee of £200 will become payable by you when you receive notice of the hearing date.

Help with Fees

If you think you may be entitled to a reduced fee, the guide EX160A 'Apply for help with court, tribunal and probate fees' outlines how you can submit an application for Help with Fees.

You can submit your Help with Fees application online at www.gov.uk/help-with-court-fees or by completing the form EX160 'Apply for help with fees'. You can get a copy of the 'Apply for help with fees' form online at www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees or from your regional tribunal

office.

If you have completed an online application for Help with Fees please enter the reference number you have been given here.

H	W	F	-				-			
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If you have completed form EX160 “Apply for Help with Fees” it must be included with your application.

The ‘Apply for help with fees’ form will not be copied to other parties

14. STATEMENT OF TRUTH

The statement of truth must be signed and dated.

I believe that the facts stated in this application are true.

Signed: M C Fitch **Dated:** 05 April 2024

GROUND FOR SEEKING DISPENSATION

Please use the space below to provide information mentioned in section 7 of this form.

You will be given an opportunity later to give further details of your case and to supply the Tribunal with any documents that support it. At this stage you should give a clear outline of your case so that the Tribunal understands what your application is about. Please continue on a separate sheet if necessary.

1. Describe the qualifying works or qualifying long-term agreement concerned, stating when the works were carried out or planned to be carried out or in the case of a long-term agreement, the date that agreement was entered into or the proposed date it is to be entered into.

To enter into a 2 or 3 year contract for the supply of gas and electricity to all of our landlord supplies which concern the communal area of our managed blocks. We have not entered into this agreement yet and seek dispensation before proceeding.

2. Describe the consultation that has been carried out or is proposed to be carried out.

We propose to send a letter to all affected leaseholders setting out details of the application and informing

them that :

1. details of the consultation procedure proposed is available on our website
2. a copy of the application with all the relevant documents is available on our website
3. directions, when made by the Tribunal will be available on our website;

3. Explain why you seek dispensation of all or any of the consultation requirements.

We are seeking a total dispensation of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended).

Given that the fuel procurement process in an increasingly volatile market, it is such that suppliers submit prices on 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 we need to be able to act within hours.

In the circumstances, it is impracticable and impossible for us to comply with the consultation requirements.

ANNEX: Addresses of Tribunal Regional Offices

NORTHERN REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, 1st Floor, Piccadilly Exchange, Piccadilly
Plaza, Manchester M1 4AH

Telephone: 01612 379491

Fax: 01264 785 128

Email address: RPNorthern@justice.gov.uk

This office covers the following Metropolitan districts: Barnsley, Bolton, Bradford, Bury, Calderdale, Doncaster, Gateshead, Kirklees, Knowsley, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Oldham, Rochdale, Rotherham, St. Helens, Salford, Sefton, Sheffield, Stockport, Sunderland, Tameside, Trafford, Tyneside (North & South), Wakefield, Wigan and Wirral.

It also covers the following unitary authorities: Hartlepool, Middlesbrough, Redcar and Cleveland, Darlington, Halton, Blackburn with Darwen, Blackpool, Kingston-upon-Hull, East Riding of Yorkshire, Northeast Lincolnshire, North Lincolnshire, Stockton-on-Tees, Warrington and York.

It also covers the following Counties: Cumbria, Durham, East Cheshire, Lancashire, Lincolnshire, Northumberland, North Yorkshire and West Cheshire.

MIDLAND REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, Centre City Tower, 5-7 Hill Street,
Birmingham, B5 4UU

Telephone: 0121 600 7888

Fax: 01264 785 122

Email address: RPMidland@justice.gov.uk

This office covers the following Metropolitan districts: Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

It also covers the following unitary authorities: Derby, Leicester, Rutland, Nottingham, Herefordshire, Telford and Wrekin and Stoke-on-Trent.

It also covers the following Counties: Derbyshire, Leicestershire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire and Worcestershire.

EASTERN REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, Cambridge County Court, 197 East Road
Cambridge, CB1 1BA

Telephone: 01223 841 524

Fax: 01264 785 129

Email address: RPEastern@justice.gov.uk

DX 97650 Cambridge 3

This office covers the following unitary authorities: Bracknell Forest, West Berkshire, Reading, Slough, Windsor and Maidenhead, Wokingham, Luton, Peterborough, Milton Keynes, Southend-on-Sea and Thurrock.

It also covers the following Counties: Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hertfordshire, Norfolk, Northamptonshire, Oxfordshire and Suffolk.

SOUTHERN REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, Havant Justice Centre, The Court House,
Elmleigh Road, Havant, Hants, PO9 2AL

Telephone: 01243 779 394

Fax: 0870 7395 900

Email address: RPSouthern@justice.gov.uk

This office covers the following unitary authorities: Bath and Northeast Somerset, Bristol, North Somerset, South Gloucestershire, Bournemouth, Plymouth, Torbay, Poole, Swindon, Medway, Brighton and Hove, Portsmouth, Southampton and the Isle of Wight.

It also covers the following Counties: Cornwall and the Isles of Scilly, Devon, Dorset, East Sussex, Gloucestershire, Hampshire, Kent, Somerset, Surrey, West Sussex and Wiltshire.

LONDON REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, 10 Alfred Place, London WC1E 7LR

Telephone: 020 7446 7700

Fax: 01264 785 060

Email address: London.RAP@justice.gov.uk

DX 134205 Tottenham Court Road 2

This office covers all the London boroughs.

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

To receive a paper copy of this privacy notice, please call 0300 123 1024/ Textphone 18001 0300 123 1024.



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

Case Reference	: CHI/00MR/LDC/2024/0066
Property	: Various Properties set out on attached Schedule
Applicant	: Portsmouth City Council Mark.fitch@portsmouthcc.gov.uk
Representative	:
Respondent	: Various Leaseholders set out on the attached schedule
Representative	:
Type of Application	: To dispense with the requirement to consult lessees about a qualifying long term agreement 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	: Judge N Jutton
Date of Directions	: 1 May 2024

DIRECTIONS

This is a formal order of the Tribunal which must be complied with by the parties.

The parties must comply with the Statement on Tribunal Rules and Procedure and the Guidance on PDF bundles which are enclosed with these directions (if not already provided).

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Email addresses and service of documents (*delete as appropriate*)

1. The Respondent(s) shall on receipt of the application and these directions do the following:
 - i) write to the Tribunal, electronically if possible, acknowledging receipt;
 - ii) provide a suitable email address to the Tribunal and the Applicant for the service of documents (which the Respondent shall do whether, or not, the Applicant included an email address on the application form); or
 - iii) if not in possession of an email address and unable to obtain one, inform the Tribunal accordingly.
 - iv) **if the Respondent wishes to appoint a representative to act on their behalf they must send written authority to the Tribunal.**
2. If the Applicant did not provide an email address for the Applicant on the application form, the Applicant shall also do the following:
 - i) provide a suitable email address to the Tribunal and the Respondent for the service of documents; or
 - ii) if not in possession of an email address and unable to obtain one, inform the Tribunal accordingly.
3. **If the Application form was signed by a representative, written authority from the Applicant appointing them to act on their behalf must be sent to the Tribunal within 14 days.**
4. Documents to be sent by one party to another shall be sent electronically to the email address provided, unless the receiving party requests a paper copy.

Background

5. 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.
6. The Applicant explains that, it is the lessor of a number of blocks of residential flats. The addresses of the flats within those blocks and details of the lessees (the Respondents) for each flat are set out in the attached schedule provided by the Applicant. The Applicant says that it is responsible for the supply of heating and lighting to the communal areas of the said flats. In order to mitigate the increased costs for the supply of gas and electricity over the last two years the Applicant seeks to enter into a form of qualifying long term agreement for the supply of gas and electricity in respect of the communal areas of the said blocks of flats. The Applicant says that energy prices have recently fallen but there is still considerable risk and potential volatility in the energy supply market. That energy contract prices cannot be held by the suppliers for longer than a day. The Applicant seeks to enter into a qualifying long term agreement for the supply of energy on the same day as the suppliers offer their prices, in order to obtain the best cost as far as possible for the supply of energy for the benefit of both the Applicant and its lessees. The Applicant looks to enter into an agreement for a 2 to 3 year duration. Given the very limited amount of time in which a particular energy supply agreement may be available for acceptance the Applicant will not be able to comply with the consultation requirements required by section 20 of the Landlord and Tenant Act 1985 and therefore seeks dispensation from those requirements pursuant to section 20ZA of that Act.
7. The Applicant says that its current contract for the supply of gas and electricity expires on 30 September 2024.
8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the supply of gas and electricity, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

DIRECTIONS

9. The application is to be determined on the papers **without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013** unless a party objects in writing to the Tribunal within 14 days of the date of receipt of these directions.
10. If any party requests an oral hearing it shall take place at a time and place to be advised with a time estimate of 3 hours.
11. **Immediately** on receipt of these directions the **Applicant** shall send them including the Statement of Rules and procedures and Guidance on pdf bundles together with a copy of the application to each Respondent and shall by **5.00pm on 22 May 2024** confirm to the Tribunal that this has been done. **IF THE APPLICANT FAILS TO INFORM THE TRIBUNAL BY THE SAID DATE THE APPLICATION WILL BE STRUCK OUT WITHOUT FURTHER NOTICE.**

The Applicant's case

12. The application shall stand as the Applicant's case.

The leaseholders' case

13. The Respondents shall by **5.00pm on 12 June 2024: -**

Complete the attached reply form and send it to the Tribunal (electronically) and to the Applicant; **and, if they oppose the application;**

- A statement setting out why they oppose the application
- Evidence of what they may do/have done differently if the Applicant were or had to comply with the full statutory consultation process
- Copies of all documents to be relied upon **not** already included in the Applicant's bundle

Note: The Tribunal will assume that those Respondents not returning the attached form and those agreeing to the application do not wish to receive any further communications from the Tribunal including a copy of the determination unless a specific request is made. The determination will, however, be binding on all leaseholders.

The Applicant's Reply

14. The Applicant must reply to any objection received by **5.00pm on 26 June 2024** which must be sent to the Tribunal electronically and to the Respondent(s) making the objection and must be included in the determination/hearing bundle.
15. **If no reply forms to the application from the Respondents are received a bundle is not required, however the Applicant must confirm to the Tribunal by 5.00pm on 19 June 2024 that no reply forms have been received.**
16. **In the event of a reply(s) being received the following Directions will apply.**

Documents for the hearing / determination

17. The Applicant shall be responsible for preparing the bundle of relevant documents, the contents of which should be agreed by the parties, and shall by **5.00pm on 3 July 2024** send one copy to the other party(s) and send one copy (electronically) to the Tribunal.
18. **THE BUNDLE MUST BE IN PDF AND COMPLY WITH THE GUIDANCE ON PDF BUNDLES DATED 20 SEPTEMBER 2022.**
19. **If there are objections to the application and the hearing bundle is not sent to the Tribunal by the said date or not in the required format, the Application will be struck out.**
20. The Tribunal will only consider the documents in the bundle. Parties should not send documents piecemeal to the case officer.
21. The bundle shall contain copies of:
 - The application with accompanying documents
 - The relevant lease
 - The Directions
 - Leaseholder reply forms
 - All statements of case
 - All relevant documents relied upon by either party
22. Documents should only appear once within the bundle even if relied upon by each party e.g. one copy only of the lease.
23. If an oral hearing is requested the Applicant shall bring an additional copy of the bundle to the hearing.

Form for Respondents

Case Reference: CHI/
Premises:

Please return this form to the Tribunal at rpsouthern@justice.gov.uk as soon as possible but at the latest by **5.00pm on 12 June 2024**
Also send a copy to the Applicant's representative at the email address shown on the application form:

	Yes	No
I/We agree with the application (whole or in part)		
I/We agree that the Tribunal may decide the matter on the basis of written representations only (no hearing).		
Name and address of any spokesperson or representative appointed for the Respondent:		

Signed:

Print name:

Date:

Flat number:

Telephone number(s):

Email address:

**PLEASE USE A SEPARATE SHEET SETTING OUT YOUR
OBJECTIONS TO THE APPLICATION.**

First tier Tribunal Property Chamber
(Residential Property)

Applications and requests for case management or other interim orders

The Tribunal Procedure First-Tier Tribunal (Property Chamber) Rules 2013

It is important that you read the notes below carefully before you complete this form.

This is the form to use if you want to ask a tribunal judge to consider a procedural matter.
A procedural matter could be (but is not limited to) one of the following:

- An application to amend/vary/extend the tribunal's directions
- An application to postpone a hearing
- An application to debar evidence from another party
- An application to join proceedings

Applications should be sent as a Microsoft Word document by email to the relevant regional tribunal address shown in the Annex to this form. If you cannot access email or find someone to assist you in lodging your application by email, then a paper application will be acceptable although there may be a delay in dealing with this. Sending an application on paper will not be suitable in urgent cases.

Please do not use this form to request consent to the withdrawal of an application or to apply for permission to appeal as separate forms are available for those purposes.

Please also note that the tribunal cannot give legal advice, so please do not use this form if you are seeking legal advice.

If you are completing this form by hand please use BLOCK CAPITAL LETTERS.

1. TRIBUNAL'S CASE REFERENCE NUMBER

Case Ref:

CHI/ooMR/LDC/2024/0066

2. ADDRESS OF PROPERTY

Various Properties of Portsmouth City Council

3. YOUR NAME

Cheryl Robinson

4. RELATIONSHIP TO CASE (ie Applicant, Applicant's representative, Respondent, Respondent's Representative)

Applicant's representative (employee of Portsmouth City Council)

5. IF YOU ARE THE REPRESENTATIVE PLEASE ADD NAME OF COMPANY (ie name of solicitors, property/managing agent etc)

Name:

Portsmouth City Council

6. BRIEF DESCRIPTION OF THE APPLICATION OR REQUEST AND THE ORDER THAT YOU WISH THE TRIBUNAL TO MAKE (ie postponement, extend/vary/amend directions, debar evidence)

We send our apologies and regrets at the failure to respond in respect of the two leaseholders who sent in their objections to this application.

We incorrectly interpreted your directions and were going to provide bundles and respond to leaseholders upon further instruction from the Tribunal. We take full responsibility for this error and will correct it (we have now contacted leaseholders concerned) within a new timeframe set by the Tribunal if our application is allowed to proceed.

We are certain that if we are required to commence the application from the beginning this will cause upset and confusion for our leaseholders, as many of them were greatly confused by the application and it did cause some distress and concern to our leaseholders and many telephone conversations were had with our customers to reassure them of our intention. Many leaseholders made payments to the Tribunal when it was not necessary, despite us sending a covering letter clearly explaining the procedure and why we were making the application. We are in need of procuring energy at the best possible prices for our leaseholders as well as our tenants so would like this case to progress to achieve this for them and for our tenants also.

7. GROUNDS/REASONS FOR APPLICATION OR REQUEST

We are experiencing reduced resource within our leasehold team and are doing our best to provide a good and robust service to our customers on a day to day basis and we misinterpreted your directions. We respectfully request the continuation to be agreed for the sake of our customers to cause them no further confusion or repeated actions to complete in respect of this application.

8. CONSENT AND NOTIFICATION TO OTHER PARTIES

(a) If all parties **agree** to this application then you must attach a copy of their written consent

(b) If all parties **do not** agree to this application then you must confirm that you have sent them a copy of this application and notify them that they must send a copy of any objection to the tribunal and to the applicant (ie the person/party making this application). Please tick the box to confirm that this has been done?



9. AVAILABILITY IF THE TRIBUNAL DECIDE TO DEAL WITH THIS BY MEANS OF A CONFERENCE CALL

If the Tribunal decides to deal with this by means of a conference call, are there any dates/times to avoid in the next ten working days?

Dates on which you will NOT be available:

--

10. STATEMENT OF TRUTH

The statement of truth must be signed and dated.

I believe that the facts stated in this application are true.

Signed: Cheryl Robinson **Dated:** 10/08/2024



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

Case Reference : CHI/00MR/LDC/2024/0066

Property : Various Properties set out on attached Schedule

Applicant : Portsmouth City Council
Mark.fitch@portsmouthcc.gov.uk

Representative :

Respondent : Various Leaseholders set out on the attached schedule

Representative :

Type of Application : To dispense with the requirement to consult lessees about a qualifying long term agreement 20ZA of the Landlord and Tenant Act 1985

Tribunal Member : Judge N Jutton

Date of Order : 14 August 2024

ORDER TO REINSTATE

This is a formal order of the Tribunal which must be complied with by the parties.

The parties must comply with the Statement on Tribunal Rules and Procedure and the Guidance on PDF bundles which are enclosed with these directions (if not already provided).

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Background

1. Directions made by the Tribunal dated 1 May 2024 provided that in the event that objections were received to the application the Applicant was required to prepare a bundle of documents to be sent to the Tribunal by 3 July 2024. That in default the application would be struck out. The Applicant failed to comply and by an order dated 5 July 2024 the application was struck out.
2. By a case management application dated 7 August 2024 the Applicant applies to reinstate these proceedings. Rule 9(6) of the Tribunal Procedure Rules 2013 provides that an application to reinstate a case where proceedings have been struck out under rule 9(3)(a) (as in this case) must be made within 28 days after the date on which the Tribunal sent notification of the strike out to that party. The notice to strike out was sent to the Applicant on 9 July 2024. The application to reinstate therefore should have been made by 6 August 2024. It was made one day late.
3. The Applicant apologises for failing to comply with previous Directions. It says that it will comply with any new Directions if the case is reinstated. If the case is not reinstated it will submit a fresh application which it says may cause confusion and upset to certain of the Respondents. The Applicant blames a lack of resources and sickness of staff for its failure to comply with the previous Directions.

DECISION

4. The Tribunal has considered the application carefully bearing in mind the overriding objective to deal with cases fairly and justly. It reminds itself of the nature of these proceedings. That undoubtedly in the event that the Applicant commences its application afresh confusion and upset may be caused to certain Respondents. It notes that this application is to be determined on the papers without a hearing. The Tribunal notes that a number of Respondents

returned reply forms confirming their agreement to the application. That only two Respondents objected. In all circumstances the Tribunal grants the Applicant's application to reinstate these proceedings

5. **The Tribunal Orders:**

6. Pursuant to Rule 9(5) of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal reinstates these proceedings.
7. Pursuant to rule 6(3)(a) of the said Rules the Tribunal extends the Applicant's time for filing an application to reinstate to 7 August 2024.
8. The Applicant shall send to the Tribunal the hearing bundle as required by paragraphs 17 – 22 of the Directions dated 1 May 2024 by **4.00pm on 28 August 2024. In default the Application will be struck out without further order.**
9. On receipt of the bundle the Tribunal will proceed to determine the application on the papers without a hearing as provided for by the Directions dated 1 May 2024.

Statement of Case

BACKGROUND

Portsmouth City Council manages around 17000 residential properties, 2000 of those are leaseholders and shared ownership homes. We had a long-term contract for our Non-Half Hourly Fixed electricity that comes to an end on 30th Sept 2024. This means that if left to roll into 'Out of Contract rates' the costs to leaseholders and shared owners would increase significantly, and we needed to enter another contract to obtain best value for our customers. With the Non-Half Hourly Fixed Tariff supplies, we need to conduct a formal tender via our energy broker. Once the tenders are received, the prices are only valid typically on the same day they are quoted. This is due to the volatility of the wholesale energy markets. As a result of this, unfortunately it makes it impossible to have a 3-month consultation process for leaseholders to discuss the tender returns, proposed supplier and fixed rates offered on any given day.

Due to the size of the organisation's portfolio, we must procure our energy on a corporate contract that contains all of the Councils non-domestic and domestic landlord meters, so this is for all buildings that collectively use around 10,500,000 units of electricity per annum. The decision to sign the contracts is one we took under advisement from our energy broker, given the potential market risks to ensure no further costs for all parties, including those leaseholders who will be recharged. Prices recently have been increasing following Ukraine entering Russia, adding security of supply risks to the wholesale market.

The Market

In terms of wholesale markets, when we first had our initial supplier responses for our Invitation to Tender, the wholesale markets were as follows for Electricity on 26th July 2024 (Original ITT Wholesale):

Winter 2024 = £83.39/MWh or 8.339 pence per unit

Summer 2025 = £73.29/MWh 7.329 pence per unit

The closing rates on the day we signed the contracts were from 12th August 2024 (PCC Secured Rates):

Winter 2024 = £93.85/MWh or 9.385 pence per unit

Summer 2025 = £81.66/MWh or 8.166 pence per unit

A week after we locked in a contract (19th August 2024) the wholesale rates were continuing to rise with them coming in at Latest Wholesale Rates:

Winter 2024 = £95.30/MWh or 9.53 pence per unit

Summer 2025 = £83.23/MWh or 8.323 pence per unit

This demonstrates the increase in prices both prior to and since locking in a price on 9th August 2024. Note these prices are purely the wholesale element of the electricity cost, not the actual unit rate that includes non-commodity costs (taxes, levies, network and supplier charges).

The Contract

We have had to proceed and sign contracts already, on 9th August 2024 and this is primarily because tensions with Ukraine and Russia as well as the middle east has added to further market instability recently, including reacting negatively to Ukraine invading Russia's Russian territory. This has meant that prices have been gradually rising over the past few weeks. As per discussions with our energy broker and as risk mitigation given the market increases, we have had to try and lock in rates to safeguard from a repeat of the energy market turmoil when the Ukraine invasion happened only a few years ago, when at its peak resulted in a wholesale price increase of approximately 600%. Due to the recent market increases, suppliers have been withdrawing their fixed contractual offers almost within the hour of having them produced, making locking in rates on the same day difficult.

Procurement

A fully OJEU compliant competitive tendering exercise was undertaken in July using our energy brokers dynamic purchasing system (DPS). This DPS has 17 registered suppliers on it, all of which can bid for the tender opportunities.

The tender was sent to all DPS suppliers, however there were only 2 valid supplier returns in total from the tendering exercise. We believe this is due to many suppliers not looking to adopt Non-Half Hourly electricity supplies due to market changes that will require suppliers to upgrade electricity supply meters under contract in the next two years.

The Council accepted the lowest bid from the tender returns.

Dispensation

The dispensation is required because the obtaining a fixed price contract via a tendering process using a public sector complaint DPS procurement exercise requires contracts to be signed shortly after the winning supplier is chosen. Having to undertake a leaseholder consultation exercise to announce the winning supplier would risk the losing suppliers who tendered, requesting to be able to 'refresh' their prices due to the time period between the winning supplier and contracts being signed. This could result in a different supplier winning the tender. Post tender, supply contracts are typically signed on the same day. This is primarily due to wholesale market rates changing daily, this cost makes up approximately 40% of the invoice charges, but enough to require suppliers to have to get a refreshed quote every day as the rates and contract offer expire by the close of daily business. We have now contracted with the cheapest supplier who could support our metering portfolio over an 18-month duration. The 18-month direction has been chosen to align contracts in 18 months to the financial year (April to March) to aid in budget and financial planning. We followed a full tendering exercise with 17 suppliers on a DPS framework, in accordance with public sector procurement requirements and contracted with the cheapest provider who tendered, ensuring the best possible value for both the Council and leaseholders.



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

Case Reference : CHI/00MR/LDC/2024/0066

Property : Various Properties set out on attached Schedule

Applicant : Portsmouth City Council
cheryl.robinson@portsmouthcc.gov.uk

Respondents : Various Leaseholders as set out on the schedule attached to the application form

Objecting Respondents : [REDACTED]

Unconfirmed Response : [REDACTED]

Type of Application : To dispense with the requirement to consult lessees about a qualifying long term agreement 20ZA of the Landlord and Tenant Act 1985

Legal Officer : Mrs Charlotte Cooper

Date of Directions : 8 September 2024

**REVIEW OF THE
DETERMINATION
BUNDLE**

This is a formal order of the Tribunal which must be complied with by the parties.

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

This Order has been made by a Legal Officer. Any party affected by it is entitled to ask for it to be considered afresh by a Judge, by making a case management application by email to the Tribunal within 14 days after the date of the Directions.

Background

1. The Applicant sought 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. The application was received on 5 April 2024.

2. The Applicant explained that:

With the unprecedented increased gas and electricity prices over the last two years, we seek to mitigate some of those price rises for the benefit of our residents by entering into a longer term contract as the energy market has fallen over the last few months. There is still considerable risk and potential volatility in the market, therefore we seek to lock in prices while the market has fallen. Given Energy contract prices cannot be held by the suppliers for longer than a day, we seek to enter into a contract on the same day as the suppliers offer their prices.

We are seeking dispensation in order to lock in the best possible deal before our current contracts come to an end.

The current contracts for Gas and Electricity expire on the 30th September 2024

3. Directions were issued on 1 May 2024 setting a timetable for the exchange of documents preparatory to a determination on the papers.

4. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.

5. A number of Respondents have returned their reply form confirming their agreement to the application.

6. Two Respondents have objected to the application: [REDACTED]
[REDACTED]

7. One Respondent has returned the reply form unticked [REDACTED] it is therefore unclear if they object to the application or not.

8. Following a strike out of the application due to non compliance of the Directions by the Applicant, the application was then reinstated on 14 August 2024 requiring a bundle to be provided as required by paragraphs 17 – 22 of the Directions dated 1 May 2024.

9. The Tribunal has reviewed the bundle and finds that it has not been submitted in accordance with the earlier Directions of the Tribunal.

10. Paragraph 21 of the Directions dated 1 May 2024 outlined the contents required to be in the bundle. ie:

- The application with accompanying documents
 - The relevant lease
 - The Directions
 - Leaseholder reply forms
 - All statements of case
 - All relevant documents relied upon by either party
11. The bundle that has been submitted does not contain all of the Tribunal's Directions (Strike Out decision dated 5 July 2024 or Reinstatement Order dated 14 August 2024) and does not contain any Respondent reply forms.
12. The Tribunal reiterates, as was stated in the earlier Directions that the Tribunal will only consider the documents in the bundle. Therefore, **all** documentation needs to be included in the bundle.
13. The Tribunal also considers that following 2 leaseholder objections an oral hearing is necessary.
14. The Tribunal will send a copy of these Directions to the objecting Respondents.
15. The Applicant must send a copy of these Directions to all the remaining leaseholders and/or publish to their website so that they are aware of the same.

DIRECTIONS

Any act required by these Directions to be done on or by a particular day must be done before 5pm on that day.

The parties must comply with these Directions.

Only evidence and documents exchanged between the parties in accordance with the timetable below shall be included within the bundle. At the hearing the Tribunal will only consider evidence previously exchanged. If a party wishes to rely upon oral evidence at the hearing they must have provided a written statement in accordance with the Directions below.

Hearing

16. The hearing shall take place on **Tuesday 1 October 2024** at **Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL** starting at **10:00 am**.
17. The hearing is scheduled to last 2 hours. If the parties disagree with the length of the hearing, they must notify the Tribunal immediately.
5. The Applicant must supply the Tribunal with a hearing fee of £220.00 by **20 September 2024**. If a hearing fee is not paid the application may be deemed withdrawn under Rule 11 of the Tribunal Procedure (First-tier Tribunal) (property Chamber) Rules 2013.

Documents for the hearing

18. The Applicant must provide an amended bundle of relevant documents, the contents of which should include all the documents as referred to at paragraphs 10 – 12 and 21 and shall by **20 September 2024** send one copy to the objecting Respondents and send one copy (electronically) to the Tribunal.

19. **THE BUNDLE MUST BE IN PDF AND COMPLY WITH THE GUIDANCE ON PDF BUNDLES.**
20. If the hearing bundle is not sent to the Tribunal by the said date or not in the required format, the Application will be struck out without further notice.
21. **The Tribunal will only consider the documents in the bundle. Parties should not send documents piecemeal to the case officer.**
22. The bundle shall contain one copy only of any document relevant to the issues to be determined by the Tribunal
 - The application with accompanying documents
 - The relevant lease/s
 - All of the Tribunal's Directions
 - All returned Leaseholder reply forms
 - All statements of case
 - All witness statements
 - All relevant documents relied upon by either party
23. The bundle index shall be paginated such that the bundle and pdf pages match and shall identify any significant exhibits to statements separate to the statement themselves.
24. Documents should only appear once within the bundle even if relied upon by each party e.g. one copy only of the application form.
25. The parties shall ensure that any witness on whom the party wishes to rely has either a paper copy of the hearing bundle or access to an electronic copy. It is for each party to ensure that their witnesses are so prepared. If they do not have a copy of the bundle the Tribunal may refuse to hear their evidence.