



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

**Case Reference** : **LON/00AU/LDC/2021/0209**

**Property** : **Various residential leasehold properties belonging to Notting Hill Genesis**

**Applicant** : **Notting Hill Genesis (NHG)**

**Representative** : **Mr Ben Maltz, Counsel with Mr Amarpal Rehan, Mr Ashley Hassell, Miss Marcelle Douglas**

**Respondent** : **Various leaseholders receiving gas and electricity supplies**

**Representative** :

**Type of Application** : **Dispensation from the Consultation Requirements under Section 20ZA of the Landlord and Tenant Act 1985**

**Tribunal Members** : **Tribunal Judge Dutton**

**Date of video Hearing** : **24<sup>th</sup> February 2022**

**Date of Decision** : **15 March 2022**

## DECISION

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This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents to which the Tribunal were referred were contained in a bundle of some 540 pages together with a spreadsheet of observations. The contents of the papers before us had been carefully noted.

## DECISION

1. We determine that conditional dispensation should be granted from the remaining consultation requirements under section 20 of the Landlord and Tenant Act 1985 (the Act) and The Service Charge (Consultation Requirements) (England) Regulations 2003 in respect of the procurement of gas and electricity in respect of those Respondents who have gas or electric supply for communal heating and/or electricity supplied for common parts, for a period ending on 31 March 2026.
2. We make no determination as to the reasonableness of the cost of same, these being matters which can be considered if necessary, under the provisions of section 19 and 27A of the Act.
3. The conditions imposed to dispensation are set out in the schedule annexed hereto.

## **THE APPLICATION**

1. The Applicant freeholder sought dispensation from the consultation provisions in respect of procurement for gas and electricity to the 37,335 residents named as Respondents in the application who receive gas or electric for communal heating and electrical supply for communal lighting.
2. The application on behalf of NHG was dated 11<sup>th</sup> August 2021. Directions were initially issued on 11<sup>th</sup> October 2021 but subsequently amended to ensure that all interested parties received notices relating to the application.
3. In support of the application a statement was made by Laura Shellard, Head of Energy and Sustainability for NHG which has been provided to the Respondents. Miss Shellard did not give evidence at the hearing.
4. To paraphrase her statement, it appears that there was an amalgamation of Notting Hill and Genesis to form NHG in April 2018. Prior to that each of the associations had been arranging for the supply of gas and electricity to those properties for which a communal supply applied. It appears that NHG manages some 66,000 properties and that 37,335 are properties which receive communal

gas or electrical supply from the communal heating and from communal lighting. As we understand it, this application does not relate to those people who have their own electrical and gas supplies and who deal directly with whatever company provides those utilities.

5. The statement tells us that the Applicants entered into a third-party intermediary agreement (TPI) with Inenco Group Limited who act as their brokers originally for an initial period of three years with an option to extend for a further two years. This agreement, which on the face of it would be a qualifying long-term agreement, does not require consultation because the costs to each individual Respondent we were told was something around £2 per annum.
6. Under the agreement with Inenco they approached the marketplace to obtain bids from energy companies to supply gas and/or electric across the relevant properties. We were told that due to the nature of the energy market NHG could not follow the formal section 20 consultation procedure because the market operated on the basis that bids are requested and contracts are signed within a 24-hour period for a fixed price contract or otherwise by 4.00pm on the date issued.
7. It was said on behalf of NHG that entering the partnership with Inenco would allow the Applicants to take a longer-term strategic approach to purchasing energy on behalf of the residents and businesses. In addition, by proceeding in this way and not being hamstrung by the public procurement regulations, NHG would have the benefit of being able to take advantage of its purchasing power and economies of scale using the TPI arrangements with Inenco. It appears that now a single year agreement has been entered into but that expires at the end of March 2022. It is then intended that there would be a qualifying long-term agreement (QLTA) for the remainder of the brokerage contract, which will, according to NHG provide better value for money to the Respondents.
8. NHG have been in detailed contact with the Respondents many of whom have sent notices following the issue of the directions by the Tribunal indicating that they oppose the application and wished to attend the hearing.
9. Within the bundle of papers provided to us were several emails from residents, which were not as helpful as, they might have been because the names had been redacted by the applicant. There was also a schedule of observations where addresses were provided, the complaint made by the unnamed resident and relevant responses from NHG.
10. It was not considered that an inspection was necessary and indeed would not have been relevant given the application for dispensation and its subject. The only issue for the Tribunal to consider is whether it is reasonable to dispense with the statutory consultation requirements under section 20 of the 1985 Act. The application does not concern the issue as to whether any of the service charge costs will be reasonable or payable.

## **HEARING**

11. The matter came before us for hearing on 24<sup>th</sup> February 2022. The Applicant was represented by Mr Ben Maltz of Counsel and accompanied by several employees of NHG.
12. While Mr Maltz was content to allow those Respondents who attended the hearing to speak first, he did just confirm that the dispensation was sought under schedule 2 of the consultation requirements relating to QLTAs for which public notice is required. He told us that part 1 of the consultation provisions had been complied with and that dispensation was sought from the remainder.
13. The following Respondents attended the hearing and were given the opportunity to speak. They were:
  - Mr Charles Tocca, Flat 16 Len Williams Court
  - Mr Graham Anderson, Flat 19, 9 Angel Lane
  - Miss Jasmin Begum, resident of the Endeavour Block
  - Mr Lyubomir Petkov, resident of Brandon Court
  - Mr Mohammed Ilyas, resident of Mayflower/Endeavour
  - Ms Melania Uzila, resident of Manor Place Depot
  - Miss Phillipa Marks of Endeavour and Mayflower
  - Mr Mohammed Mia, resident of Endeavour Block
  - Mr Shaifur Rahman of Endeavour/Mayflower
14. Miss Begam raised concerns regarding the continued use of Switch2 and that there may be a doubling up of costs. There seemed to be some confusion as to the supply of services to the block in which she was an occupier and reference was made to own gas boilers but it appears from further discussions during the course of the hearing that there is no gas in the property for which Miss Begam was speaking, namely Endeavour House as well as Mayflower and this caused some confusion. Apparently, there were some 64 tenants in each of these blocks and we were told by Mr Ilyas that they were all social housing tenants. It was pointed out to Miss Begam that the application related to communal gas and electricity only and not to any individual supplies to the flats. Later in the hearing Mr Rahman, also a resident of Endeavour/Mayflower said that although he believed their heating was electric from 2016, they had been charged for communal gas. NHG were unable to confirm details of the heating systems in these blocks.
15. Mr Tocca questioned the need for a broker. He felt it had never been explained properly to him and that it was not right to seek dispensation.
16. Mr Maltz responded that it was in everybody's interests to make use of the TPI with Inenco as they could secure deals not available otherwise given the shortness of time and the economies of scale. He confirmed that the Inenco agreement was not part of the dispensation arrangements as there was no likelihood that the charges to the individuals would be above £100.
17. Miss Uzila was of the view that it was impossible for tenants to properly challenge the application. The district heating system made it almost impossible for tenants to challenge the costs and that they essentially had to accept the position. The question was also raised whether there was any comparison carried out to

- the previous year's costings as existing contracts had expired on 31<sup>st</sup> March 2021 and a one-year agreement under the auspices of Inenco had been entered into which as we have heard will expire in March of this year.
18. Mr Rehan on behalf of NHG responded that it was not possible to compare last year to this year. The marketplace was, he said, completely different and for this reason they were unable to show that any savings had been made using their agreement with Inenco.
  19. We then heard from Mr Anderson who was a resident of what was known as the Manor Place Depot which included flats in Angel Lane. He expressed concern about the information available on the contracts to be entered into and was joined in the concerns by Mr Shafur Rahman of Endeavour who confirmed that in his understanding there was no gas in the building, that Endeavour was a social housing block and that there were complaints about NHG's running.
  20. Miss Uzila asked whether NHG would be joining the Heating Trust and whether NHG followed the guidance of the Network (Metering and Billing) Regulations 2014 as amended.
  21. Again, the question of the involvement of Switch2 was raised and Miss Uzila referred us to an invoice that she had received. Mr Hassell responded to this later in the hearing. Mr Anderson who had to leave early confirmed before he did so that there were complaints about hidden costs to the residents, for example plant maintenance.
  22. Mr Petkov a resident of Brandon Court considered that NHG were negligent and were not transparent. There had been a history of problems with Brandon Court and a statement of objections had been lodged we understand by him on 27<sup>th</sup> October which set out in some detail the concerns many of which were not relevant to the application before us today. What they did do, however, was in his view set out the history of NHG's involvement and accordingly the lack of confidence that the residents had in their management. He thought a two or three-year agreement was too long, and it was unreasonable to give up their rights to challenge these matters. He considered that residents were better able to sort out their own supplies. He complained that there was little research done and that the application was vague. He could see no positive outcome.
  23. Mr Maltz responded that it was in NHG's best interest to obtain the best deal possible as of course they had their own gas and electric requirements.
  24. We asked whether there were any safeguards in the agreement with Inenco to prevent residents being trapped in a high fixed term contract if energy prices fell and Mr Rehan told us that the strategy in place was that there was cap on the capacity for price rises but if prices fell, they were able to take advantage of that in a falling market.
  25. Miss Marks, who had not initially indicated that she was attending, confirmed that she was there on behalf of The Exchange tenants resident's association. An 11-point submission had been made on behalf of the residents of Endeavour and Mayflower. We noted all that was said. She said that she supported the comments that she had heard from other residents that whilst on principle the proposed

route by NHG seemed sensible; in practice there were concerns about the transparency.

26. She wanted to know whether there were any systems in place to check the work undertaken by Inenco and that there was real concern by the residents as to the transparency of the process.
27. Mr Hassell confirmed that he would publish details of the Switch2 arrangements insofar as that was possible and undertook to provide details of how the heat unit for the estate was calculated and how this related to gas/electric unit costs
28. Mr Ilyas expressed concern that he appeared to have been receiving bills for a gas supply at his property which was the Endeavour/Mayflower block when there appeared to be no gas provided. Marcelle Douglas from NHG said that she would look into this.
29. Miss Uzila again spoke saying that she wanted conditions and whether the Heating Trust is something that would be looked into.
30. In response Mr Rehan said that he and Mr Hassell were aware of the Heating Trust and that they would consider whether it would be appropriate to join this. They confirmed that they would investigate and respond back by placing details on the website.

## **FINDINGS**

31. In making our decision we have borne in mind the numerous emails and other submissions lodged by various leaseholders and the schedule of comments, which was prepared by NHG at the Tribunal's request. We also bear in the mind the decision of the Supreme Court in *Daejan Investments Limited v Benson and Others* [2013]UKSC14 which we must take into account and must consider the prejudice that may or may not be caused to the leaseholders.
32. The energy market is extremely volatile, particularly at the moment.
33. This application is in line with those often made by local authorities in respect of the provision of communal lighting and heating both to the common parts and by way of communal boilers and supplies serving residential leaseholders.
34. It is clear to us that given the volatile nature of energy procurement NHG would not be able to obtain what we are told are significant savings for the benefit of the leaseholders if they were required to carry out the full section 20 consultation process. Further it would not be possible to obtain estimated costs to leaseholders as required because the energy would be purchased as and when competitive prices are identified by Inenco in the wholesale energy market. This information is set out in full in Miss Shellard's witness statement.
35. Apart from concerns as to transparency, no Respondent was able to persuade us that by granting dispensation there would be prejudice caused to them in the acquisition of gas and electricity. Furthermore, as we have said above, the

procurement of gas and electricity in these circumstances is not possible under the provisions of the consultation process.

36. Accordingly, we find it is reasonable to grant dispensation from the remaining consultation requirements under section 20 of the Act and in respect of schedule 2 of the 2003 regulations.
37. We should make it clear that our decision in this case is in respect of the dispensation provisions under section 20 of the Act only. Any concern that a Respondent has as to the costs and the provision of the services is a separate matter and their rights are not affected by our finding in this case.
38. We set out below the condition that we consider should be imposed which were discussed and agreed by NHG during the hearing.
39. We also record that whilst we can make no condition requiring NHG to become involved in the Heating Trust, we do record Mr Hassell's agreement to investigate the possibility and to post the results of his investigation on NHG's website within the next six months.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 15 March 2022

**Condition attached to dispensation during the currency of the agreement with Inenco Group Limited**

The Applicant will, within 14 days of entering into an agreement through Inenco Group Limited for the procurement of gas and or electricity for the period of the TPI Partnership agreement:

1. Disclose all administration costs and other costs and charges associated with such procurement.
2. Disclose details of the main points of each procurement agreement, in particular the unit costs, the length of the contract, protection against price changes and a short summary to support the basis upon which they entered into the procurement agreement(s). This information must be placed on the NHG web site for the Respondents to view.

## **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.