

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
RESIDENTIAL PROPERTY

Case Ref: LON/00BC/LDC/2025/0655

B E T W E E N:

NOTTING HILL GENESIS

Applicant

-and-

**TENANTS AND LEASEHOLDERS OF PROPERTIES
CHSRGED FOR COMMUNAL ELECTRICITY AND GAS
WITHIN GREATER LONDON AND SURROUNDING COUNTIES**

Respondents

SKELETON ARGUMENT ON BEHALF OF THE APPLICANT

for hearing on 25 September 2025

References in square brackets relate to page numbers in the hearing bundle prepared by the Applicant

Introduction

1. These submissions are made on behalf of Notting Hill Genesis (“NHG”) in support of its pre-emptive application under s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for dispensation in respect of the relevant consultation requirements that would otherwise apply to proposed Qualifying Long-Term Agreements (“QLTAs”) for the supply of communal electricity and gas.
2. Notting Hill Genesis is a Registered Provider of Social Housing and manages approximately 60,000 properties in Greater London and the surrounding counties.

Across its stock there are over 5,000 communal electricity meters and over 200 communal gas meters, covering approximately 25,000 properties in respect of which service charges are payable by the relevant leaseholders for communal electricity and/or gas consumption.

3. In 2021 NHG previously applied to this Tribunal under s.20ZA for dispensation from the consultation requirements under s.20 of the 1985 Act and, more specifically, Schedule 2 to The Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regs”).
4. Following a hearing on 24 February 2022, Tribunal Judge Dutton gave a written Decision dated 15 March 2022 [47], granting NHG conditional dispensation from the remaining consultation requirements, for a period ending on 31 March 2026.
5. This application seeks, essentially, to extend the period covered by a grant of conditional dispensation, so as to facilitate the procurement of energy supply contracts in partnership with NHG’s appointed TPI broker, Inenco.
6. NHG submitted this application to the Tribunal in February 2025 [3], and at the same time NHG wrote to all of the relevant leaseholders on 27 February 2025 [13], giving notice of its intention to make this application in respect of proposed future QLTAs for the supply of communal energy and explaining the reason why compliance with the consultation requirements would not be feasible.
7. The application has elicited a large number of responses, and NHG has summarised the initial observations and its responses in a helpful table at [36] to [38] of the bundle. All of the formal objections to the application together with NHG’s responses (where given) at [69] to [328]. An index of these objections can be found at [65].
8. NHG has submitted a Statement of Case [25], and witness statements from Tom Owen (Disputes and Consultation Manager) [27] and Amarpal Rehan (Energy Manager) [30] both dated 17 April 2025.

9. Although the Application indicated that the proposed further QLTA would be entered into from 1 April 2026 for 3 years, Mr Rehan explains at para.12 of his statement [32] that NHG now intends to enter into a single year supply agreement from 1 April 2026, and seek to enter into a QLTA commencing after 31 March 2027.
10. On 28 February 2025 the Tribunal issued written Directions for the conduct of the Application, which were subject to one amendment and reissued on 22 April 2025 [17]. NHG has complied with the Tribunal's directions, and all objectors have been notified of the hearing listed on 25 September 2025, as clarified by the Tribunal's letter dated 11 June 2025 confirming the comments of Judge Donegan.

Legal Framework

11. Section 20 of the L&T Act 1985 provides as follows:

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

12. The scope and requirements for consultation applying to qualifying works is prescribed by the Service Charges (Consultation Requirements) (England) Regulations 2003, as follows:

4. Application of section 20 to qualifying long term agreements

(1) Section 20 shall apply to a qualifying long term agreement if relevant costs¹ incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period,

being more than £100.

5. The consultation requirements: qualifying long-term agreements

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

13. The Tribunal's statutory discretion to grant dispensation is set out in Section 20ZA of the L&T Act 1985:

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate 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.

14. In ***Daejan Investments Ltd v Benson* [2013] UKSC 14** the Supreme Court gave definitive guidance on the correct approach to be adopted by Tribunals when determining dispensation applications under s.20ZA. Given that the purpose of the consultation requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (2) paying more than would be appropriate, the issue for the Tribunal must be the extent to which the tenants were prejudiced by the landlord's failure to comply.
15. It was held by Lord Neuberger in *Daejan* that although the legal burden of proof on a dispensation application remains with the landlord, the factual burden of identifying some relevant prejudice that would be suffered rests on the tenants (para.67). *Deajan* also confirmed that the Tribunal has power to grant conditional dispensation on such terms as it thinks fit (para.55).

Submissions

16. NHG is quite properly making this further dispensation application pre-emptively, rather than retrospectively.
17. It must be stressed that the grant of dispensation does not restrict or impinge any leaseholder's separate right to challenge the payability or reasonableness of a service charge subsequently levied in respect of energy consumption incurred under the proposed QLTA. Indeed, recital (F) of the Tribunal's Directions makes this point explicitly clear [18].
18. As explained in the Application, it is NHG's intention to continue to use the services of Inenco, a TPI and specialist energy broker, to procure energy in bulk for future years as the best means of achieving as low a unit price for communal electricity and gas.
19. In order to maximise the opportunities for securing best value, NHG will need the flexibility to enter into QLTAs, rather than 12-month agreements. That said, by entering into an initial 12-month (non-QLTA) agreement from 1 April 2026, Inenco will have a greater period, and therefore the increased opportunity, to secure best value for the QLTA that will commence on 1 April 2027.
20. Furthermore, adherence to the consultation requirements in Schedule 2 to the 2003 Regs is wholly impractical in the context of energy supply agreements, given that competitive quotations for energy are only held for a matter of hours.
21. Many objectors argue that their right to be consulted on energy supply contracts should not be dispensed with. Given the manner in which energy supply contracts are procured, refusal of dispensation would leave NHG having to purchase 12-month (non-QLTA) contracts in respect of which no consultation requirements would arise in any event.
22. It is commonplace for large social landlords to make this type of dispensation application, it having become increasingly important to secure best value during the

recent period of volatility and high inflation in energy prices.

23. In the Decision relating to NHG's previous application (Case Ref. LON/00AU/LDC/2021/0209) Tribunal Judge Dutton observed as follows [52]:

"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 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....

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."

24. It is submitted that there would be no real (as opposed to perceived) prejudice to leaseholders in the present case. The fact that future savings cannot be guaranteed is not a basis for refusing dispensation.

25. It must be appreciated that NHG is also a major contributor to communal energy costs across its property portfolio, as it bears the costs where its let properties are not subject to a service charge. It follows that it is very much in NHG's interests to secure best value when entering into the proposed energy supply agreements.

26. In so far as some of the objectors argue that the previous QLTA entered into by Inenco did not represent best value, NHG have acknowledged that the timing of that procurement was unfortunate due to unusually high energy prices caused by global events.

27. As stated above, NHG will be mitigating the risk of this occurring again, by entering

into an initial 12 month contract on 1 April 2026, allowing Inenco a full 18 months to procure the proposed QLTA.

28. NHG recognises the need for transparency in the procurement of the proposed QLTA, and it is submitted that this can be achieved through appropriate conditions being attached to the grant of dispensation. It is appreciated that some objectors complain that the conditions attached to the previous grant of dispensation were not complied with. NHG will comply with such conditions if they are attached to the further grant of dispensation sought.

29. In the previous decision the Tribunal attached the following conditions to the grant of dispensation:

“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.”

30. It is submitted that like conditions would be sufficient in the present case.

Conclusion

31. It is respectfully submitted that the dispensation sought to be granted to NHG.

32. Any conditions upon which the grant of dispensation is to be made conditional, should follow those ordered by the Tribunal previously.

22 September 2025

BEN MALTZ

five
paper