



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

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

Properties : **Various Properties in the ownership of Midland Heart as Landlord**

Applicant : **Midland Heart Limited**

Representative : **Guy Grant - Energy & Utilities Manager**

Respondents : **The Lessees**

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 : **23/02/2024**

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 19 January 2024, the Applicant Landlord sought 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 1829 properties in the Midlands, of which Midland Heart is the Landlord, which benefit from Landlords Lighting or District Heating.
4. The Applicant states the following within the application form:

Due to the large volumes of energy required, the contracts for the Housing Association are classed as a non-domestic supply. Market volatility means that prices in the non-domestic gas and electricity retail markets are often only held for a few hours and don't permit compliance with compliant Section 20 consultation. Added to this, energy prices have risen significantly compared to where they were two years ago and are expected to remain high for some time to come.

Midland Heart Limited are committed to provide the best value services for our tenants and wish to take a more risk managed approach to the procurement of energy. Being in the market as early as possible and for as long as possible provides the best opportunity for risk managed procurement. There are currently opportunities to buy long term energy at prices significantly lower than the current "spot" market. This opportunity might be time limited and as such Midland Heart Limited want to secure these on behalf of our tenants whilst available.

By having a long-term contract with a supplier, the Leaseholders and Tenants will have a longer term to have stable and fairer prices. A long-term agreement will also allow for easier budgeting. This will help the buyer, Midland Heart Limited, to manage their expenses more efficiently and will also prevent any surprise increases further down the line.

Midland Heart Limited are seeking dispensation for energy contracts we intend to enter into effective from 1 October 2024.

Midland Hearts' current broker is Inspired Energy Plc, with whom we entered an agreement on 1 October 2019 between Midland Heart and Inspired Energy Pl (the "Master Agreement"). Under the existing Master Agreement, all of the Applicants' energy supplies have already been procured up to 30th September 2024. Midland Heart intend to procure for a new broker ahead of the expiry of the Master Agreement on 30th September 2024 in order to implement our agreed procurement strategy from 1st October 2024 onwards. The agreed procurement strategy has been reviewed with our current broker, Inspired Energy Plc, and includes seeking this dispensation to allow flexibility for securing Leasehold 5 Application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act energy volumes beyond 12 month windows, with the intention of reducing price risk volatility and hopefully shielding residents from potential future energy shocks, such as have recently been experienced. The energy supplies would be flexibly sourced using an established Public Contracts Regulations 2015-compliant framework agreement.

Note the Master Agreement (and an intended replacement agreement entered into with Inspired Energy Plc or an alternative broker) is not an agreement for which the Applicants are required to consult tenants under section 20 of the Landlord and Tenant Act 1985 because, throughout the currency of the Master Agreement (and its replacement), the amount payable by any tenant paying a service charge will be less than £100 in any 12 month accounting period. The Master Agreement (and its replacement) is, however, referred to as a way to reference the multiple gas and electricity supply contracts, which Midland Heart intends to enter into. The agreement will be in respect of energy supplied between 1st October 2024 and 30th September 2028, and be entered into from late 2023 onwards (after re-tendering for energy broker services and subject to obtaining the dispensation), depending on favourable market conditions.

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

Midland Heart is seeking dispensation from all of the consultation requirements of section 20 because they would be able to swiftly enter multiple, longer-term gas and electricity supply contracts, taking advantage of more competitive

energy prices. The Applicants would not be able to secure those significant costs savings for the benefit of their residents if they carried out a meaningful 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 residents in accordance with section 20.

The energy market remains volatile, and wholesale market pricing remains significantly higher than seen consistently before the Covid lockdown in 2020. Actively monitoring the markets and obtaining advice from their broker would enable the Applicants to procure further out into the future and secure longer term pricing. This in turn would offer price security and budget certainty, and would benefit residents by keeping their service charge for the costs of energy lower and more stable.

In addition, Midland Heart would be unable to provide estimated costs to residents which would be required if they were to comply fully with the Service Charges (Consultation Requirements) (England) Regulations 2003.

The energy would be purchased as and when a competitive price was identified by our broker on the wholesale energy market and so they would not be able to advise residents of the cost in advance of contract placement. Midland Heart will be provided by our broker 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. The energy market continues to be volatile, and the residents would benefit from any reduction to forecast increases for the duration of the contract. The period of the agreements would be from 1st October 2024 to 30th September 2028.

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 15 March 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 12 April 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: utilities@midlandheart.org.uk) by **27 March 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 12 April 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 26 April 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 10 May 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:

BIR/00CN/LDC/2024/0003

Properties: Various Properties in the ownership of Midland Heart as Landlord

Please return this form to the Tribunal at the latest by 12 April 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:

Guy Grant, Energy & Utilities Manager, Midland Heart, Bath Row,
Birmingham B15 1LZ

Email: utilities@midlandheart.org.uk

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: