

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

**IN THE MATTER OF Section 20ZA Dispensation for Long Term  
Agreements for the supply of gas and electricity to Leaseholders in  
London Borough of Hammersmith & Fulham.**

**BETWEEN:-**

**LONDON BOROUGH OF HAMMERSMITH & FULHAM**

**Applicants**

**and**

**LEASEHOLDERS**

**OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

**Respondents**

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**GROUND FOR SEEKING DISPENSATION**

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**Application**

1. This is an application by the London Borough of Hammersmith & Fulham “the Council” for dispensation from the statutory consultation procedures in relation to agreements that the Council intends to enter into for:
  - The supply of electricity to blocks and estates and street properties for landlords’ lighting, staircase lighting, lifts, estate lighting, boiler rooms and communal services such as door entry systems and fire alarms serving the residential leasehold properties.

- The supply of gas to the boiler room on estates, communal block boilers and communal supplies on smaller blocks serving the residential leasehold properties.
2. The Respondents of this application are the Leaseholders who pay for the supply of energy as part of their service charges. A spreadsheet of the relevant addresses is at **Appendix 1**. Examples of standard Leases are at **Appendix 2**.

### **Qualifying Long Term Agreements (“QLTAs”)**

3. Section 20 of the Act provides that:
  - (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 an appeal from) the appropriate tribunal.”
4. Qualifying long term agreements are defined in section 20ZA as follows:
  - (1) ... “qualifying long term agreement” means ... an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
5. Section 20 imposes a limit on the amount of service charges recoverable where the requirements have been neither complied with nor dispensed with.
6. Regulation 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) (“the Regulations”) applies section 20 to qualifying long term agreements (QLTAs) if:
  - (1) ..... relevant costs 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.”

7. Regulation 5(1) of the Regulations provides that:
  - (1) 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 section 20 and 20ZA as regards the agreement, are the requirements specified in schedule 2.

### **Background**

8. The Council uses a Central Purchasing Body (CPB) procurement strategy to supply residential property buildings with electricity and gas. The current agreements are call-off contracts from a LASER Framework, an organisation part of Kent County Council Commercial Services (KCC) which procures energy for over 160 local authorities and other public funded bodies.
9. The existing framework agreement ends on 31<sup>st</sup> March 2025 and the Council now seeks dispensation to put in place buying arrangements for a 5 and a half year supply period starting on 1<sup>st</sup> December 2024 through to 31<sup>st</sup> March 2030. The Council intends to enter into the contract by 1<sup>st</sup> December 2024 to enable forward purchasing in the run up to commencement of the new supply period.

### **The Framework Agreement**

10. The Council has identified that the best strategy and award for energy procurement would be via LASER governed by a London public sector wide client function, i.e. London Energy Partnership Project (LEPP), a shared public sector service, set up and supported by Cornwall Insight and London Borough Energy Group (LBEG), which operates on a non-profit basis by member contributions.

11. The Council intends to award for the supply of gas and electricity from 1<sup>st</sup> December 2024 to 31<sup>st</sup> March 2030 via the LEPP through to LASER framework. Under this framework, organisations are provided with additional choice based on their risk, needs and preference, the Council will have the option of two LASER Energy Call-off Contracts for Flexible Procurement and Supply of:
  - Half Hourly and Non-Half Hourly Metered & Unmetered Electricity with Meter Operations & Additional Services
  - Daily and Non-Daily Metered Natural Gas, including Product Classes 1, 2, 3 & 4 with Additional Services
12. It is possible that the Council will enter into a fixed term price contract for electricity (“the FTFP Contract”) for electricity procured through a LASER Framework Agreement as it may be in the Council’s and leaseholders’ interest to accept a fixed price contract if markets are particularly low. The advantage of a FTFP Contract is that prices are fixed at the point the contract is secured. However most large multi-site customers have transitioned away from FTFP contracts in recent years due to the risk that the contract will be struck at a point where market prices are high, which means the Council and residents would pay high prices for the duration of the contract.
13. LASER (Kent County Council) will be the contracting party in terms of the Framework Agreement and the Council would be a participating authority. Once the Council confirms that it will access supplies through the framework agreement and confirms its buying strategy, LASER will purchase energy through the supplier on forward markets and short-term markets for the Council and other participating organisations in advance of the December 2024 supply date. This becomes the “energy commodity” price that the Council pays within invoices for gas or electricity in December 2024 and subsequent years, which is the weighted average of the forward purchases made.

14. LASER will charge a recovery fee for framework management and providing a buying and risk management service, which is recovered through the supplier's invoice. This fee is a very small percentage of the total cost of the energy contract but is nevertheless comparable or lower priced than similar organisations offering the same or similar services. The cost of the energy commodity that is forward purchased, by LASER on behalf of the Council, is recovered by the supplier within the invoice, when it is actually supplied. This form of buying and risk management means that the Council does not have to pay for the energy commodity before it is supplied and is an effective way to manage risk and volatility.
15. The tender for the framework agreement for the suppliers complies with the Public Contract Regulations 2015 and was awarded on a Most Economically Advantageous Basis, which included a rigorous evaluation of non-energy commodity price elements, financial standing and terms and conditions.
16. The framework supplier appointed for electricity is Npower and the framework supplier appointed for gas is Corona.
17. Under the proposed LEPP through to LASER Framework, LASER will be able to provide contracts ready for delivery of energy supply from December 2024.

#### **The benefits of using a public sector Buying Organisation**

18. Energy prices are made up of three major components; infrastructure costs (pipes, wires and metering); taxation and levies, which are regulated by government; and wholesale commodity markets, which are complex and volatile, making them liable to sudden price fluctuations which are often linked to real or perceived threats to supply and demand that can significantly vary prices on a daily basis. A significant part of the energy price payable is market-related, a key variant and influencing factor is the wholesale commodity price. Due to its volatility, the energy market cannot

be index linked and true cost savings accrue directly from a lower absolute outlay. Given the nature of the energy market and influencing factors such as the increasing move to renewables, carbon reduction measures, taxation, reduction in generating capacity and increased reliance on energy imports, it is unlikely that the opportunity for any absolute cost reduction will occur on a consistent basis.

19. The framework is beneficial as it enables public sector authorities to, in effect, work together and collectively buy energy on the wholesale market through a Central Purchasing Body, such as LASER, that aggregates and purchases gas and electricity commodities when market conditions are favourable. The ability to purchase 'chunks' of energy over longer periods of time avoids the high-risk strategy of single day purchasing typically associated with fixed term, fixed price tendering.
20. In this way, the Council is able to aggregate its own and residents' required energy consumption with LASER's other customers to secure energy in a cost effective and risk managed way. LASER's market experts track wholesale energy market prices on a daily basis and determine, in accordance with a Governance Panel, the best strategy and timing to procure our energy requirements. Energy purchases are made in multiple blocks prior to the point of use ("flexible procurement") so as to mitigate the risk of buying all of our energy requirements on any one day, at which point the market price could be high. LASER has a strong track record in flexible energy procurement that has delivered significant cost avoidance to the Council. The Council could not run as effective a flexible procurement strategy on our own, due to having insufficient volume and in-house knowledge of energy market prices. The Council and residents would also lose out on the benefits of aggregating our volumes with other LASER customers, including the lower supplier management fees and sharing benefits the Council currently receives. The Council will sign an Access Agreement with LASER and a Call off Contract with the energy suppliers.

## **Consultation issues**

21. It would not be practical for leaseholders to be consulted on every occasion that LASER forward purchases energy through the supplier on the Council's behalf as by the time the consultation process has been concluded, the prices would no longer be available. Indeed, a requirement to consult would render participation with a buying organisation led procurement process unworkable.
22. Furthermore, the prices received during the forward purchasing process would not necessarily be the same as the final contract price to the Council residents but rather components of the final price, which, as noted above, would be a product of the forward buying decisions taken in the run up to the contract start date. Other aspects of pricing are regulated by government, such as distribution and use of network costs (pipes, wires and metering)
23. In relation to the FTFP Contract LASER may obtain prices on the Council's behalf from suppliers on a particular day by vetting and analysing prices over a period of time for different options of contractual terms. The price and contract options may be available for 24 – 48 hours but certainly for too short a period to provide a 30-day consultation period. It is also sometimes necessary to accept prices for additions to the contract during the contract period with sometimes as little as 2 hours' notice. It would not be possible to react to changes while accommodating a 30-day consultation period.
24. In such circumstances, the process of providing a detailed proposal, inviting observations and responding to those observations as required by paragraphs 4, 5(2) and 7 of Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") respectively, would render the whole energy supply contract process unworkable. Neither estimates received nor contract offers would be held for the length of time taken to consult.

25. The Council would like to award for the supply of gas and electricity from 1<sup>st</sup> December 2024 to 31<sup>st</sup> March 2030 via the LASER Framework in respect of which public notice has already been served. As public notice has already been served, the Council does not intend to serve a further public notice in respect of the new contracts.
26. To allow for effective forward purchasing of energy volumes for the 1<sup>st</sup> April 2025 supply period, the Council wishes to instruct LASER to begin purchasing energy from 1<sup>st</sup> December 2024.

### **Consultation - The relevant regime**

27. The energy supply contracts the Council intend to enter into are of a sufficient value that it would require public notice, and accordingly the relevant consultation is Schedule 2 of the Regulations. However, the Council will not be giving public notice for the contracts it enters into because it will rely on the public notices served by LASER when they set up the framework agreements which the Council will access to obtain their own contract.

### **Dispensation - Schedule 2**

#### **Notice of Intention**

28. On 5 August 2024 the Council served a Notice of Intention to all affected leaseholders for the proposed new energy supply contracts. On 12 August 2024 the Council served a Notice of Intention to all Tenants and Residents Associations. A sample copy of each covering letter and notice is at **Appendix 3**. A list of the Tenants and Resident Associations consulted is at **Appendix 4**.
29. The Notice of Intention advised recipients that the Council intended to seek dispensation for release from the full statutory consultation provisions and provided a link to this application on the dedicated webpage [www.lbhf.gov.uk/energy2025](http://www.lbhf.gov.uk/energy2025).



30. The Council will be able to comply with all the consultation requirements as set out in paragraph 1 of Schedule 2 ('Notice of Intention') other than 1(2)(d). This is because the consultation provisions anticipate that a public notice will be given whereas, for the reasons set out at paragraphs 20 – 23 above, the Council will be relying on a public notice that has already been given by LASER. Dispensation is sought for release from the requirement to publish a new public notice.
31. Dispensation is further sought from the following paragraphs of Schedule 2 ('Landlord;s Proposal') to the Regulations as regards:
- 4(2) providing the name and address of the other party to the contract and any connection it has with the Council.
  - 4(4) providing an estimate of the relevant contribution to be incurred by the tenant;
  - 4(5) providing an estimate of the total amount of expenditure under the proposed agreement;
  - 4(6) providing a statement of the current unit cost or hourly or daily rate applicable;
  - 4(7) providing a statement of the reasons why The Council cannot comply with sub-paragraph 4(6)(b) and the date by which an estimate can be provided;
  - 4(9) confirming the intended duration of the agreement; and
  - 4(10) preparing a statement of observations and the Council's response to them.
32. In return, the Council suggests the following conditions to be applied pursuant to the dispensation:
- The Council to publicise and maintain a dedicated webpage hosting information on the proposal, the application to the First-tier Tribunal for dispensation, a copy of the full Directions, and, subsequently, the Tribunal's Decision.
  - Within 21 days of entering into contract, the Council to publish on its website contract information about:

- i. The name of the energy supplier;
  - ii. The date of the agreement;
  - iii. The contract duration;
  - iv. The date on which supply starts;
  - v. The date on which the contract period ends; and
  - vi. A summary of the observations received through the Notice of Intention and the Council's response to the same
- The Council to additionally offer on the website an opportunity for any Respondent requesting it a copy of the supply agreement which the Council has entered into with an energy supplier. This will be available free of charge for a period of 30 days following publication of the award information.

33. The Council seeks dispensation because the tender process for energy procurement is incompatible with elements of the consultation process. This is because to achieve the best value for money, and the best price for energy, LBH&F are required to make timely decisions in this procurement process as the price can change significantly over a short period of time. This provides difficulty following the consultation process under Section 20 of the Landlord and Tenant Act 1985, as amended, which can take 3 months to complete. The Council respectfully requests that in these particular circumstances that dispensation be granted on the terms presented. Leaseholders are not anticipated to suffer any prejudice if dispensation is granted.
34. The Council's leaseholders will retain the right to challenge the cost of the energy procured under a flexible contract if they do not consider it to be reasonable and make an application to this Tribunal to determine their liability to pay.

Dated this 10<sup>th</sup> day of September 2024



Signed:

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Assistant Director of Legal Services  
Hammersmith & Fulham Legal Services