



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	CAM/33UE/LDC/2023/0056
Applicant	Freebridge Community Housing Limited
Representative	Birketts (Clive Adams)
Respondents	All leaseholders and tenants of dwellings at the Properties who may be liable to pay a service charge towards costs incurred under the proposed energy agreement
Properties	All properties which may directly or indirectly be charged for gas and/or electricity under the proposed energy agreement
Tribunal member	Mary Hardman FRICS IRRV(Hons)
Date of directions	3 January 2024

DIRECTIONS ON AN APPLICATION UNDER SECTION 20ZA OF
THE LANDLORD AND TENANT ACT 1985

- 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.
- These directions are formal orders and must be complied with. The parties are referred to the Tribunal Procedure (First-tier Tribunal) Rules 2013.
- 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 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 them pursuant to rules 9(7) and (8) of the 2013 Rules.

- **Non-compliance could also result in the tribunal making a determination on costs pursuant to Rule 13 of the 2013 Rules.**

Application

- (1) In this application, the applicant landlord seeks dispensation with the statutory consultation requirements in respect of a qualifying long-term agreement ("QLTA"). The applicant has entered into the QLTA for the supply of energy from about October 2022. This includes supply of personal and communal gas and electricity and personal utility charges in respect of heating and hot water provided to individual flats as part of a communal heating system, as explained in the application documents.
- (2) The applicant says significantly better prices were available if the applicant was able to accept a quotation (enter into an agreement) for supply of energy for a minimum term of more than one year. They say it was not possible to comply with the consultation requirements because such quotations have very short time limits for acceptance.
- (3) No details of the agreement have been provided with the documentation beyond that the supplier is Total Gas and Power and a short summary of the difference between the contract rate and out of contract rate said to have been achieved under the agreement.
- (4) The applicant indicates that energy is supplied under the proposed agreement to properties (flats or other dwellings) in some 17 sheltered housing developments. The applicant appears to have identified in the application (pages 13-35), the leaseholders and tenants of such properties who may through the service charge under their lease or tenancy agreement be asked to pay under the proposed energy agreement. However, it is not clear whether the lists include all leaseholders and tenants, or only those who may be required to pay more than £100pa under the proposed agreement.
- (5) To seek to avoid any potential issue about this (because the consultation requirements appear to provide for notices to be sent to all tenants) or delay as a result, they will under the following directions need to notify all leaseholders and tenants who may be liable to pay a service charge (irrespective of amount) towards costs incurred under the proposed energy agreement. However, if they say this is impractical and they wish to take any risk in this respect by notifying only those whose contributions might otherwise be capped at £100 per service charge year, they can apply to the tribunal by **24 January 2024** for further or revised directions.
- (6) These directions are given on the assumption that the applicant wishes to make the requisite documents (see 2. below) available on its website, so that it only needs initially to send explanatory letters to the relevant leaseholders and tenants. Again, if the applicant seeks any variation of these directions, they must apply to the tribunal by **24 January 2024**.

- (7) The only issue for the tribunal in this application is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**
- (8) Any communication to the tribunal should if possible be by email to rpeastern@justice.gov.uk, quoting the case reference and property address and copied to the other active parties, but unless otherwise directed hard copy bundles will be required as set out below.

DIRECTIONS

1. The tribunal will determine this application on or after **13 March 2024 based** on written representations, unless by **21 February 2024** any party makes a request for an oral hearing, or the tribunal decides on review of the bundle directed below that a hearing is necessary. If any party requests or the tribunal directs an oral hearing it shall take place on a date to be advised.

Service of documents

2. By **31 January 2024**, the **applicant landlord** must take the following steps:
- a) write to each of the respondents by email, hand delivery or first-class post, setting out the following:
 - i. informing them of the application.
 - ii. providing a copy of these directions.
 - iii. advising them that a copy of the application and all supporting documents (with personal details deleted) and a copy of these directions together with a copy of the QLTA or the key parts of it (including the parties, its precise dates/duration, and the scope of services or a summary) are available online, advising them of the URL address and any details needed to view and download copies, and notifying them that any response to the application needs to be made by **21 February 2024**;
 - iv. informing the respondents that if they wish to receive a printed copy of the application documents and these directions and a copy of the QLTA or the key parts of it as set out in 2.a) (iii) above they should write to the applicant, who will then send printed copies (again, with any personal details deleted);
 - v. advising the respondents that as the application progresses additional documents will be added to the website, including the final decision of the tribunal, stating clearly that the final decision is likely to be uploaded on or after **20 March 2024**; and

- b) Confirm to the tribunal by email that this has been done and stating the date(s) on which this was done.

Any opposition to the application

- 3. Those respondents (leaseholders or tenants) who **oppose** the application shall by **14 February 2024** send to the **applicant landlord**:
 - a) The reply form attached to these directions, completed by the relevant respondent; and
 - b) A statement in response to the application, with copies of any evidence and other documents upon which they wish to rely.

Notification of any request for a hearing

- 4. If any respondent requests a hearing, or the applicant wishes to request a hearing, the applicant must as soon as possible apply to the tribunal for further directions, with their dates to avoid and all dates to avoid provided for **April and May 2024**.

Bundle for the determination

- 5. The applicant landlord shall prepare a bundle of documents in accordance with the annexed guidance. The bundle must contain all the documents on which the applicant landlord relies, including copies of:
 - a) the documents sent and made available to the respondents in accordance with paragraph 2(a) of these directions;
 - b) the confirmation sent in accordance with paragraph 2(b) of these directions;
 - c) any further directions; and
 - d) copies of any replies, statements and other documents from the respondents (there is no need to include any communication which only requests paper copies of the application documents without opposing or making any comment in relation to the application, if there is a large number of such requests, but it may be useful to have confirmation of how many such requests were made).
- 6. By **28 February 2024** the applicant must:
 - a) upload a copy of the bundle to their (or the relevant) website;
 - b) write to each of the respondents who have sent a reply form to oppose the application, by email and/or post, providing them with a link to the uploaded bundle and, if they request one, a paper copy of the bundle;

- c) send to the tribunal a similar link to the uploaded bundle, which can be downloaded by the tribunal. The subject line of the email must read: "BUNDLE FOR PAPER DETERMINATION: [case reference number]"; and
- d) deliver **two** hard copies of the bundle to the tribunal. If any respondent opposes the application, the tribunal will require an **additional** hard copy of the bundle.

General

- 7. The tribunal will send a copy of its eventual decision on dispensation to the representative of every represented respondent, and to any unrepresented or other respondent, who have completed and returned the reply form attached to these directions. The applicant may wish to send copies of the decision directly to all respondents, but unless otherwise directed that will be a matter for them.
- 8. In any event, the applicant landlord shall place a copy of the tribunal's eventual decision on dispensation together with an explanation of the appeal rights on their (or the relevant) website **within seven days of receipt** and shall maintain it there for at least three months, with a sufficiently prominent link to both on their home page.

GUIDANCE FOR PREPARING BUNDLES.

Format

- *hole punched in an A4 lever arch. file (or fastened with treasury tags)*
- with an index on the first page
- **numbered page by page**, preferably at the bottom right of each page (remember you and the tribunal will need to refer to these page numbers to quickly direct everyone to each item to be discussed)
- **in date order**, earliest to latest, where practicable (especially correspondence and other relevant documents e.g. accounts, invoices, bank statements)
- *use a sensible number of section dividers/tabs (usually between 5 and 30) between key sections/documents (e.g. between statements of case)*
- do **not** use plastic wallets
- all contents should be **A4** (unless you need to include **A3** documents to make them legible; if so, punch one side only and fold them so they can be opened and read easily)

Contents

- as set out in the case management directions (including the application form, directions/orders, each party's statement of their case, witness statements, the lease or tenancy agreement where relevant, relevant reports/documents and all other documents which you or the other parties rely on)
- use good quality copies of all documents and **colour** copy plans/photographs
- you may wish to include a chronology
- try to present e-mails as individual items, not long chains, and leave out irrelevant automatic disclaimers/notices at the end of e-mails
- avoid duplicates or irrelevant correspondence

Agreeing the bundle

- the party responsible for preparing the bundle should send a draft index to the other party in good time in advance; the parties must co-operate in seeking to agree what the bundle should contain

General

- Remember that only those documents sent in properly prepared bundles are likely to be before the tribunal at the full hearing
- It can be appropriate to have separate bundles (e.g. one for the application, orders, witness statements and so on, and one for the documentary evidence such as accounts, invoices, bank statements, if this is bulky)
- If the tribunal has given permission for electronic bundles, they should be prepared as above (apart from the items in italics). They should be in PDF format. A large PDF bundle may be split into two for e-mail transmission.
- If you wish to produce video evidence, you will need to liaise with the tribunal in advance to ask to arrange this.

Reply Form for leaseholders/tenants.

Case Reference:	CAM/33UE/LDC/2023/0056
Property:	Freebridge Community Housing - properties in Kings Lynn and West Norfolk (QLTA and works)
Individual property address:	

ONLY COMPLETE AND RETURN THIS FORM IF YOU OBJECT TO THE APPLICATION

If you do object, please complete and return this form by e-mail to the **applicant**.

	Yes	No
Have you sent a statement in response to the landlord?	<input type="checkbox"/>	<input type="checkbox"/>
Do wish to have an oral hearing? If so, please provide your dates to avoid below.	<input type="checkbox"/>	<input type="checkbox"/>
Name address of any spokesperson or representative appointed for the leaseholder:		

Please also complete the details below:

Date:	
Signature:	
Print Name:	
Address of affected property:	
Your correspondence address (if different):	
Telephone:	
Email:	

If you have requested a hearing, please provide below your dates to avoid for the period from April to May 2024.
