

- (1) Filed on behalf of the Applicant
- (2) Deponent **Ian Almeida**
- (3) Witness Statement: First
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**IN THE PROPERTY CHAMBER**

**RESIDENTIAL PROPERTY**

**BETWEEN:**

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH

Applicant

- and -

THE LEASEHOLD OWNERS OF 13,966 PROPERTIES

Respondents

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WITNESS STATEMENT OF IAN ALMEIDA

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1. My full name is Ian Almeida. I am employed by the Applicant, the London Borough of Wandsworth. My business address is the Town Hall, Wandsworth High Street, Wandsworth, London, SW18 2PU
2. I am a Project Officer (Energy Management) in the Energy Management Team which is part of the Applicant's Housing and Regeneration Directorate. I report to Mr Hussein El Bahrawy who is the Head of the Design Service. My responsibilities include managing contracts for energy for the Council's buildings. I am authorised to make this witness statement on behalf of the Council.
3. There is now produced and shown to me marked "IA1" a paginated bundle of documents to which I shall refer in this witness statement. This statement has been prepared, based on information provided by email correspondence and over the telephone.
4. I make this witness statement in support of the Applicant's application to dispense with the consultation requirements in relation to electricity and gas contracts which the Council wishes to place. The applications relating to gas are for dispensation of the consultation requirements contained in Section 20 of the Landlord and Tenant Act 1985. Gas is used for communal heating and hot water supplies. The application in respect of electricity is for dispensation of the consultation requirements in Section 20 of the Landlord and Tenant Act 1985, in relation to electricity supplied as part of service charges and re-charged to leaseholders.
5. The Council has made four previous applications to the Tribunal for dispensation relating to these contracts as follows:-
  - March 2009 (for gas)
  - February 2010 (for electricity)
  - 2012 (for electricity and gas)
  - 2016 (for electricity and gas)
6. The Tribunal granted the Council dispensation in each case and the Council entered into a Framework Agreement for the supply of gas and electricity. Copies of the decisions in these applications under references LON/00BJ/LDC/2009-2012, LON/00BJ/LDC/2010/0017,

LON/00BJ/LDC/2012/0061 and LON/00BJ/LDC/2016/0051 are exhibited at **pages 1 to 25 of “IA1”**.

7. The current Framework Agreement for both the gas and electricity contracts expires on 30 September 2020 and must be renewed for the period from 1 October 2020 to 30 September 2024. As such, the Council is required to make a further application for dispensation from the requirements of Section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”). The renewal, consists of an Access Agreement with the Central Purchasing Body and Call-Off contracts with the Suppliers
8. The 1985 Act requires landlords to consult with leaseholders before entering into a qualifying long term agreement of more than 12 months. If the consultation requirements are not satisfied then the landlord’s ability to recover contributions from the leaseholders will be restricted, unless the Tribunal makes an order dispensing with the consultation requirements.
9. Fuel contracts fall under the definition of a “*qualifying long term agreement*” within the 1985 Act where they exceed 1 year and the contribution from any one leaseholder might exceed £100 per annum.
10. Energy markets are both 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 change prices, on a daily basis. The majority of the energy price payable used to be market related, although Government taxes and pass through charges have been increasingly significant in recent years. The key variant and influencing factor is the wholesale price. Because of its volatility, the energy market cannot be index linked and the true cost savings accrue directly from the lower absolute outlay. Given the nature of the energy market and the influencing factors such as the increasing move to renewables, carbon reduction measures, taxation and increased reliance on energy imports, it is very unlikely that the opportunity for any absolute cost reduction will occur.
11. Many years ago, the Office of Government Commerce, (later became part of the Efficiency and Reform Group within the Cabinet Office), as part of a planned Government Energy Project to improve the way the Public Sector buys its energy, recommended that all Public Sector bodies buy energy through an aggregated, flexible, risk managed framework, managed by experts: a central purchasing body (CPB).
12. The effectiveness of the access agreement / call-off contract, is derived from the ability of Public Sector Authorities to, in effect, work together and collectively buy energy on the wholesale market, through a CPB that aggregates and purchases gas and electricity commodities where 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 price, fixed period, tendering.
13. The Council’s CPB is Laser (Local Authority South East Region, part of Kent County Council) who are active in planned government initiatives and have been assessed and approved as a best practice energy procurement service provided by the OGC led collaborative energy category and London Energy Project (part of London Councils’ Capital Ambition). (*Note: The LEP is to close as of the end of March 2020*). The contract arrangement has been let in compliance with EU Regulations. The mechanism allows purchasing decisions to be undertaken; there is no element

of trading. A full OJEU process, including meeting the UK Public Sector Procurement regulations, is undertaken by LASER in determining flexible suppliers.

14. To keep the forward purchasing window of aggregated quantities intact, participating organisations have been required to commit to the next four year term, to enable energy to be procured into future years. As mentioned above, the ability to purchase the portfolio requirement according to market liquidity and availability means that future years' purchases can be made where value is seen. In this way, full advantage of any favourable market conditions is ensured in the delivery of continued best value for money, which is in the leaseholders' best interest. However, the requirement to purchase aggregated volumes immediately, when the market is seen as offering value, means that it is not possible to comply with statutory requirements within the time scale. Accordingly, the applicant is making this application to the Tribunal to dispense with the consultation requirements in relation to particular energy contracts. The Tribunal has the power to dispense with all or any of the consultation requirements, if satisfied that it is reasonable to do so.

### **Gas Supply for Communal Heating and Hot Water Supplies**

15. There are 668 leaseholders in the London Borough of Wandsworth who are required to pay for the provision of heating and hot water from a communal boiler system. The cost of gas used by these bodies forms part of the heating and hot water charge.
16. Procurement of the Council's gas supplies was assigned to Purchase In Advance flexible framework contracts on 1 October 2009. The current flexible supplier is Total Gas and Power who is also the proposed supplier from October 2020.

### **Electricity**

17. There are 13,966 leaseholders in the London Borough of Wandsworth who are required to pay for the provision of electricity through their service charges.
18. Similar to the provision of gas, all electricity contracts aligned with the 1 October 2009 flexible framework entry date were assigned to Purchase In Advance agreements at that time. The current flexible supplier is N Power who it is proposed will continue to be the supplier from October 2020.

### **Performance**

19. The Council has been a part of the framework agreement since 1 October 2009 and the agreement has been found to be very effective in mitigating the effects of a changeable energy market. I have not copied the agreements entered into between the Council and LASER as these contain commercially sensitive information. However, if the tribunal wishes to review these I can provide copies to the tribunal itself.
20. LASER report an annual saving to the London Borough of Wandsworth of £564k, on an expenditure of approx. £9.7m a year, on their flexible energy procurement framework. A summary document provided by LASER evidencing this is exhibited at page **26 of "IA1"**.

This confirms:

Lower supplier management	£321,975
Shaping benefits	£49,474
Entire market price	£24,448

Flexibility of trading	£9,755
Volume tolerance	£4,106
Market monitoring	£93,985
Pricing transparency	£60,370

21. By way of explanation, under the purchase in advance framework agreement, energy is bought over a period of time, before the start of the annual period. As such, the price is fixed for the year and not subject to percentage increases at minimal notice as applicable to the domestic market.

### **Consultation**

22. The Council is aware that it is required to give notice of its intention to make such an application to the Tribunal, to affected leaseholders..
23. 13,966 leaseholders will be affected by this application and I am informed by Ms Elizabeth Parrett, Leasehold Services Manager with Housing Management Services, that when dispensations have been sought previously, the Council has held meetings for the leaseholders to give them the opportunity to ask questions. When the dispensation was sought in 2016 the Council held four consultation meetings in two venues in different areas of the Borough; two of the meetings were held during the day time (9:00am – 12:30pm and 1:30pm -4:00pm) and two in the early evening (4:30pm – 7:00pm). These meetings were held in the foyer of Battersea and Wandsworth Town Libraries. All of the relevant documents were available for inspection at these meetings and Council Officers were present to answer any queries. Ms Parrett was present at all the meetings and she has informed me that only 70 leaseholders attended the four meetings, (0.5% of the total number of leaseholders affected). Ms Parrett has also informed me that during the consultation in 2016, she and her team received 450 telephone calls (3.50%), 12 letters (0.08%) and 139 emails (1%).
24. In addition, in 2016 the Tribunal required the Council to exhibit the information on its website and to write to all of the leaseholders, providing details of the application and access to the same.
25. As a result of the following:
- 25.1. the current covid 19 situation and the requirement for individuals to self-isolate;
- 25.2. leaseholders predominately responding by e mail to the 2016 consultation
- 25.3. the Council being encouraged to conduct as much of its business on line as possible in order to reduce costs to its tax payers;
- 25.4. the possibility of a charge being made for the use of the library facilities (as these are now externally managed by Greenwich Leisure Ltd

the Council requests the consultation for the current application to be by way of a single page letter which is sent to all leaseholders:

- setting out details of the application; and
- informing them that a copy of the application with all the relevant documents is available on the Council's website; and

- informing the leaseholders that directions have been made by the Tribunal that have been published on the Council's website; and
  - providing that any leaseholder may respond to the application with copies of their response also being sent to the Council; and
  - advising leaseholders that copies of the application documents can be provided to them on request either in electronic format or as hard copies; and
  - providing contact details (telephone and email) in the event that any leaseholder wishes to speak to a Council officer or make any comments.
26. In the event that the Tribunal gives directions for the conduct of this application without the need for a hearing, I would respectfully request that the Council is given a period of not less than 21 days between the date of the directions order and the date for publication of details of the application and the directions on its website to ensure that there is sufficient time for the Council's website providers to make the necessary arrangements.

### **Previous Savings**

27. The Council carries out an ongoing price monitoring exercise and the latest summary is exhibited at **pages 27 to 28 of "IA1"**. This shows that the LASER prices are comparable or better than EDF prices, where direct comparison is possible.
28. LASER have confirmed that the Council's various leasehold properties operate in the Industrial and Commercial market and cannot move onto a domestic market. However, based on EDF published prices and although not a direct comparison, the London rates are set out below:-

#### Domestic Gas

- EDF - Average variable unit price 01.10.2019 - p/kWh - 3.802 p/kWh (excluding standing charge; excluding VAT)
- LASER - Average variable unit price 01.10.2019 - p/kWh - 2.69p – 2.99 p/kWh (including standing charge; excluding VAT)

#### Domestic Electricity

- EDF – Standard average variable unit price 01.10.2019 - p/kWh – 17.514p/kWh (excluding standing charge; excluding VAT)
  - EDF - Economy 7 average variable unit price 01.10.2019 - p/kWh – 20.371 (day) – 10.314 (night) p/kWh (excluding standing charge; excluding VAT)
  - LASER - Average variable unit price 01.10.2019 - p/kWh – 13.88 – 15.72 p/kWh (including standing charge; excluding VAT)
29. Under the framework agreement with LASER for the pricing period 1 October 2019 to 30 September 2020, the average cost p/kWh for gas to the Council's entire estate is 2.69 to 2.99p/kWh (depending whether the property in question uses over or under 25,000 therms). This average cost takes into account the standing charge payable. It also takes account of the fee payable by the Council under the terms of the framework agreement to LASER of either 0.038 p/kWh or 0.114 p/kWh (again depending on the level of therms used). It also takes account of the customer rebate of 0.041 p/kWh or 0.034 p/kWh payable to the Council.
30. The cost for electricity over the same pricing period -1 October 2019 to 30 September 2020- averages between 13.88 to 15.72 p/kWh. This average cost again takes into account the various standing charges payable. It also takes account of the fee payable by the Council to LASER of

between 0.083 p/kWh and 0.141 p/kWh (some sites are charged £30.44 a supply a year) and the customer rebate of between nil and 0.214 p/kWh payable to the Council.

31. The average costs set out in paragraphs 30 and 31 above are obtained from spreadsheets which contain details of the gas and electricity costs across the Council's entire estate. For reasons of confidentiality and data protection, copies of the spreadsheets are not exhibited to this witness statement but will be made available for the Tribunal's inspection, if required. The spreadsheets contain details relating to numerous other properties (including schools, leisure centres, commercial properties and housing stock which is let by the Council under secure tenancies or as temporary accommodation) in addition to leasehold properties and also contain sensitive information such as LASER reference codes and account numbers. Separating out the information relating to leasehold properties alone and removing sensitive information from the spreadsheets would be a lengthy exercise and due to the tight time constraints in the preparation of this statement, that has not been possible.
32. The only fees paid by the Council or payments received by the Council in respect of the energy supplies are as in paragraphs 29 and 30.
33. The London Public Sector Centre of Expertise, the London Energy Project ("LEP"), which was a public sector shared intelligent service of authorities that manage energy category development and supplier relationships previously carried out a value for money assessment of LASER in a report prepared for the authorities in December 2015. In this report LASER is rated as "good" for electricity and "effective" for gas prices. One of the report's key findings is that *"aggregated, flexible, risk managed (Flex) procurement was effective in controlling commodity costs and continues to be the most appropriate price risk management strategy currently available"*. The LEP also went on to state that fixed term, fixed price contracts (which were used by the Council prior to entering into the purchase in advance flexible framework with LASER) were not effective in controlling costs and present a medium financial risk.
34. Two external organisations have benchmarked LASER prices:
  - a) The Major Energy Users Council (MEUC): for the year 2018/19, against their average market prices, Laser's were 15% less for electricity and 12.5% less for gas. This equates to a cost avoidance of £693k.
  - b) The Department for Business, Energy and Industrial Strategy (BEIS) published figures which show that, for the year ending September 2019, Laser's prices were 7.5% lower than average consumer prices.

Statement of Truth

- I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed



Ian Almeida

Dated

1 April 2020

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EXHIBIT TO WITNESS STATEMENT OF IAN  
ALMEIDA  
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This is the exhibit marked "**IA1**" referred to in the witness statement of Ian Almeida.