

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER

B E T W E E N:-

MILTON KEYNES CITY COUNCIL

Applicant

and

THE LEASEHOLDERS OWNERS OF 1,141 PROPERTIES

Respondents

WITNESS STATEMENT OF NEIL ALLEN

I, Neil Allen of Civic Offices, 1 Saxon Gate East, Central Milton Keynes, Milton Keynes, Bucks, England, MK9 3EJ
WILL SAY AS FOLLOWS:-

1. I am employed by the Applicant, Milton Keynes City Council ('the Council') and my business address is as set out above.
2. I am the Head of Regulatory Services and also lead the Sustainability Team which is part of the Applicant's Environment and Property Directorate. I report to Stuart Proffitt, Director of Environment and Property. My responsibilities include managing contracts for the energy supplies for the Council's buildings, council houses, schools and a number of Town and Parish Council buildings. I am authorised to make this witness statement on behalf of the Council.
3. There is now produced, and shown to me marked NA1, a paginated bundle of documents to which I shall refer in this witness statement.
4. I make this witness statement in support of the applicant's application to dispense with the consultation requirements in Section 20 of the Landlord and Tenant Act 1985 in relation to electricity and gas contracts which the council wishes to place. The application relating to gas is in respect of the gas used for communal heating and hot water supplies to individual properties. The application in respect of electricity is in relation to electricity supplied for communal areas as part of service charges and re-charged to leaseholders.
5. The current framework agreement for both gas and electricity contracts will expire on 30 September 2024 and must be renewed for the period from 1 October 2024 to 30 September 2028. As such, the council is required to make an 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.
6. 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 have not been 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.
7. 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.

8. Energy markets are both complex and in recent times highly 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 daily. Much 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 are 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 of any absolute cost reduction will occur on a consistent basis; any reductions that could potentially be achieved would be on a short-term yearly basis only and would not be sustainable.
9. Many years ago, the Office of Government Commerce (OGC), (which 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).
10. 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 a fixed price, fixed period, tendering.
11. 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 the best practice energy procurement service provided by the OGC led collaborative energy category. LASER has over 30 years’ experience in energy procurement and has a solid track record of supporting over 100 local authorities with their energy requirements. The Flexible Gas Framework and Flexible Electricity Framework, covering the period 2024 - 2028, has been put in place in line with UK Public Sector Procurement Regulations. Any Public Body has access to this Framework Agreement but may only do so with the agreement of the Contracting Authority through Commercial Services. For these Framework Agreements, the “Contracting Authority” is Kent County Council procuring this Framework Agreement via Commercial Services Kent Ltd
12. In forming the framework, Kent County Council conducted a value for money review process for the framework baskets. Different suppliers are used across the framework basket where they provide the best value for money.
13. 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 affording it 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 interests. However, the requirement to purchase aggregate volumes immediately, when the market is seen as offering value, means that it is not possible to comply with leaseholder statutory consultation requirements, particularly to provide options for consideration through consultation. Accordingly, the applicant is making this application to the Tribunal which has the power to dispense with all or any of the consultation requirements set out in section 20 of the 1985 Act, if satisfied that it is reasonable to do so.

Gas Supply for Communal Heating and Hot Water Supplies

14. There are 836 leaseholders 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 communal boilers forms part of the heating and hot water charge.
15. Procurement of the Council's gas supplies is due to renew on the 30 September 2024. The gas contract aligns with the 1 October 2024 flexible framework entry date which allows Purchase In Advance agreements at that date. The current flexible supplier is Total Energies through the LASER framework who is also the proposed supplier from October 2024.

Electricity Supply to Communal Areas

16. There are 942 leaseholders who are required to pay for the provision of electricity in communal areas through their service charges.
17. Similar to the provision of gas, all electricity contracts align with the 1 October 2024 flexible framework entry date which allows Purchase In Advance agreements at that date. The current flexible supplier is Npower through the LASER framework who is also the proposed supplier from October 2024.

Performance

18. The council has been a part of the LASER framework agreement since 1 October 2012 and the agreement has been found to be very effective in mitigating the impacts of extreme energy price spikes within the market for both the Council and its leaseholders.
19. LASER report an annual savings to Milton Keynes City Council of £3,563,700 on an expenditure of approximately £15,392,144 a year, on their flexible energy procurement framework. A summary document provided by LASER evidencing this is exhibited in the Flex information pack at pages 2 to 37 of NA1. The table below is at page 9.

This confirms:

<i>Description</i>	<i>Avoided cost £/pa</i>
<i>Lower supplier management</i>	<i>£263,500</i>
<i>Shaping benefits</i>	<i>£26,000</i>
<i>Entire market price</i>	<i>£12,700</i>
<i>Flexibility of trading</i>	<i>£4,600</i>
<i>Volume tolerance</i>	<i>£2,200</i>
<i>LASER's purchasing performance</i>	<i>£3,205,300</i>
<i>Pricing transparency</i>	<i>£49,400</i>

20. By way of explanation, under the purchase in advance (PIA) 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.

Previous Savings

21. The Council carries out price monitoring exercises during procurement for utilities. This shows that the LASER prices are comparable or better than the prices of an alternative provider, EDF, where direct comparison is possible.
22. 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 an alternative provider, EDF, and although not a direct comparison, the rates are set out below:

Domestic Gas

- EDF – Average variable unit price 22/01/2024 – p/kWh – 12 p/kWh (excluding standing charge; excluding VAT)
- Total Energies – Average variable unit price 22/01/2024 – 7.39-7.42p/kWh (excluding standing charge; excluding VAT).

Domestic Electricity

- EDF – Standard average variable unit price 22/01/2024 – p/kWh – 36p/kWh (excluding standing charge; excluding VAT)
 - EDF – Economy 7 average variable unit price 22/01/2024 – p/kWh – 36.78 (day) – 33.02 (night) p/kWh (excluding standing charge; excluding VAT)
 - Npower– Average variable unit price 22/01/2024 – p/kWh – 24 – 33.38 p/kWh (excluding standing charge; excluding VAT).
23. Under the framework agreement with LASER for the pricing period 1 October 2023 to 30 September 2024 the average cost p/kWh for gas to the council's entire estate is 7.39 to 7.42p/kWh (depending on whether the property in question uses over or under 25,000 therms). This average cost considers the standing charge payable. It also takes account of the customer rebate of 0.07 p/kWh payable to the Council.
 24. The cost for electricity over the same pricing period 1 October 2023 to 30 September 2024 averages between 24 to 33.38 p/kWh. This average cost again considers the various standing charges payable. It also takes account of the fee payable by the Council to LASER of between 0.01 p/kWh and 0.25p/kWh (some sites are charged £24.96 or £180 a supply a year).
 25. The average costs set out in paragraphs 23 and 24 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 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 laborious and time-consuming exercise, made all the more difficult due to the tight time constraints on the Council in making this application and getting the new framework agreement in place.
 26. The only fees paid by the Council or payments received by the Council in respect of the energy supplies are as in paragraphs 23 and 24 above.
 27. Cornwall Insights provide energy market intelligence and analysis and have benchmarked LASER's prices against the market average. The performance graphs prepared by Cornwall Insights in 2023 were used by LASER in their "Laser customer event 2023" document showing that LASER's prices were significantly lower than the market average. This document is at page 38 of exhibit NA1.

Consultation

28. 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.
29. In total 1,141 leaseholders will be affected by this application. Some will be affected by the gas supply arrangements only and others by the electricity supply arrangements only and some will be affected by both.
30. As a significant number of leasehold properties are affected. The Council proposes to hold four separate consultation meetings at different locations in the city, two during the day and two in the evening, at which all documents will be available for inspection and Council officers will be present to answer any queries. Prior to these meetings the Council intends to send out a single page letter to all the affected leaseholders in the following terms:
- Setting out details of the application; and
 - Informing them that a copy of the application with all the relevant documentation is available on the Council's website and setting out details of the relevant link to the website; 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
 - Informing the leaseholders that directions have been made by the Tribunal and that those have also been published on the Council's website; and
 - Providing contact details (telephone and email) in the event that any leaseholder wishes to speak to a Council officer and/or make any comments to the Council about the application; and
 - Providing details of the dates, times and venues of the meetings referred to above.
31. In the event that the Tribunal is content with this approach, 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 required 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.

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

Neil Allen

Dated

24 April 2024