



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

Case Reference : LON/00AL/LDC/2014/0048

Property : All Leasehold Properties of
Portfolio of Royal Borough of
Greenwich

Applicants : Royal Borough of Greenwich

Respondents : All residential long leaseholders of
Royal Borough of Greenwich

Type of Application : Application under section 20ZA to
dispense with consultation
requirements

Tribunal Members : Judge Daley
Mr P Tobin FRICS

**Date of paper
determination venue** : 21 May 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision :

DECISION

Decision of the tribunal

- 1. The tribunal grants dispensation in respect of the landlord's proposal to enter into contracts for the supply of Electricity for the common parts, lighting of external communal areas, lifts, water pumps and the supply of communal heating and hot water systems.**
- 2. Dispensation is granted on conditions set out in the reason for the Tribunal's decision.**

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
2. The application is in respect of a long term agreement for the procurement of electricity for the common parts, lighting of external communal areas, lifts, water pumps and the supply of communal heating and hot water systems.
3. The only issue for the tribunal 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 are recoverable or payable.
4. The application to the tribunal was received on 31 March 2014 and directions were given in this matter on 4 April 2014.

The background

5. The properties which are the subject of this application are all long leasehold properties situated in blocks owned and managed by the Applicant.
6. The directions dated 4 April 2014, provided for the Applicant to prepare a bundle for the tribunal's use which was to include (i) any additional statement setting out the full grounds for the application, (ii) A copy of any consultation documents so far provided (iii) details of any responses so far received from the respondent.
7. The Applicant was also directed at point 10 of the directions to send to each leaseholder and chairman/secretary of the recognised residents

association and place a copy of the direction and accompanying letter in the hall/notice board at each block and shall by 22.04.2014 confirm to the tribunal that this had been done.

The Applicant's case

8. The Applicant in its statement of case set out in paragraphs 4 and 5 that its traditional energy supply contracts were arranged on a fixed term, fixed price basis. In paragraph 4 the Applicant stated that -: “ Whilst this can provide budget certainty at the point the contract is agreed, there is a risk involved with bulk purchasing from a volatile market on one day in a year. There are a range of global impacts that can move the wholesale market without warning... consequently push[ing] the contract price up.”
9. The Applicant had decided to manage these risks by using a professional buying organisation. The Applicant had considered two organisations LASER and Buying Solutions, as LASER performed better against the scoring criteria, in being able to offer greater flexibility with regard to new suppliers and were considered more responsive to customers the Applicant in the statement of case stated that they proposed to use LASER to procure its electricity supplies.
10. In the witness statement of Steven Reed an employee of the Applicant, employed as Service Charge Manager in the Home Ownership Services. Mr Reed stated -: *“The Applicant is requesting dispensation from the statutory consultation as it is unable to provide the leaseholders with a statement as to the actual or estimated unit cost or hourly or daily rate of charge for the electricity and gas supply or an estimate of the extent of each of the leaseholder’s contributions or of the total expenditure. The Applicant is as such unable to comply with Schedule 2 Paragraphs 4(4), 4(5), 4(6) and 4(7) of the Service Charge (Consultation Requirements (England) Regulations 2003.”*
11. The statement also included a number of appendices including a copy of the notice of intention to enter into a long term agreement (dated December 2013) in this notice the reasons for entering into the agreement are stated to be “... The Royal Borough of Greenwich considers the above long term agreement necessary to ensure that the supplies are placed into appropriate, value for money contracts. The provider will operate a flexible purchasing strategy to manage the risk associated with the fluctuating energy market...”

12. In respect of the responses from the leaseholders who had responded to the directions a summary of responses were provided by the Applicant at annexe 6 of the witness statement although there were replies from over 200 leaseholders over sixty leaseholders had included comments in their reply.
13. The Tribunal noted that many of the responses referred to-: a) issues concerning repairs which were outstanding at various properties. b) And, a common misconception that as the landlord was consulting this meant that the cost of communal lighting would increase to £100.00 per annum. The landlord's response was to inform the Leaseholders concerned that there was a dedicated response line for repairs and in respect of b that the Landlord was required to consult as the agreement was considered to be a Long Term Qualifying agreement.
14. The Tribunal noted that a number of the leaseholders required additional information some queried whether the contract meant that they would either be unable to choose their own supply, or would no longer be responsible for the cost of the electric supply for their property. There was however leaseholders who wanted to know how this would affect the annual cost of the contract "*...a clear breakdown of the cost to the leaseholder would be appreciated...*", and how long the contract would last.
15. The Applicant responded to the issues raised, one of the replies to a response which requested for more information stated that -... The purpose of entering into this proposed contract is to ensure that all energy supplies are value for money energy contracts. It is further hoped that by entering into this contract, the successful buying group will be able to provide.... Competitive rated and keep the costs to the residents as low as possible..."
16. No leaseholder chose to write to the Tribunal opposing the Application for the grant of dispensation.

The tribunal's decision

17. We dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the proposed contracts to be entered into subject to the conditions set out below-:
18. The landlord provides to each of the leaseholders the following information (1) definition of services to be provided. (2) details of the *Utility Suppliers* (1)name of supplier (ii)date of commencement of contract (iii)term of contract and expiry date(iv)spreadsheet analysis with columns for 1.standing charge

19. 2. day rate (e.g. electricity/kwh) 3.night rate 4.payment method 5.any discount and some comparison of the annual cost of the previous year and how this compares against the *Proposed contract*.

Reasons for the decision

20. We had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*Where as application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied it is reasonable to dispense with the requirements*".
21. The Applicant was unable to consult fully under section 20 in relation to the contracts due to the nature of type of contracts and how they operate. The Applicant however was acting in accordance with central government recommendations. The Tribunal accepted written evidence of the Applicant that this method of procurement would result in savings that will in general benefit the Respondents.
22. The Applicant had acted with the intention of obtaining "*best value*" for both the Respondents and itself and we are of the view that the Applicant has acted reasonably. We accept that by entering into those contracts given the volatility of the market, the Applicant will continue to obtain best value.
23. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the gas and electricity to be unreasonable they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
24. For all of the above reasons we conclude that it is appropriate to exercise the discretion conferred on us by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the current contracts. We do however consider that there is a need to be able to demonstrate in a systematic manner that the contracts are in the best interest of the leaseholders, so that the leaseholders may if they wish exercise their rights under section 27A at any stage of the contract. Therefore we consider it appropriate to grant dispensation on the terms set out, at paragraphs 18 and 19 above.
25. The tribunal directs that the Applicant shall notify all Respondents of the determination of the tribunal.

26. The Tribunal have made no order for costs, as there were no applications for costs before the tribunal.

Judge Ms M W Daley **Date** 21 May 2014

Appendix of Legislation

S20ZA Consultation requirements: supplementary

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises,
and
"qualifying long term agreement" means (subject to subsection (3))
an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases,
and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.