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LON/00AG/LDC/2006/0025

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL OF THE**  
**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**ON APPLICATIONS UNDER SECTIONS 20ZA**  
**OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED**

Applicant: London Borough of Camden

Respondent: All R T B Leaseholders in Camden

Re: Various Addresses in Camden ( with Fuel Supplies)

Application received: 5<sup>th</sup> April 2006

Hearing dates: 2 June 2006

Appearances: Mrs E Howells Home Ownership

Mr P Couper Finance

Ms K Turton Energy Manager

For the Applicant

For the Respondent

Members of the Leasehold Valuation Tribunal:

Mrs E Samupfonda LLB (Hons)

Mr F L Coffey FRICS

Mr L Walter

## In the Leasehold Valuation Tribunal

Ref: LON/00AG/LDC/2006/0025

Property: Various Addresses in Camden (with fuel supplies)

Applicant: London Borough of Camden

Represented by Ms E Howells, Home Ownership, Mr. P Couper Finance and Ms K Turton Energy Manager

Respondent: Joint Leaseholders of London Borough of Camden, subject to communal fuel consumption

### Tribunal

Ms E Samupfonda  
Mr. F Coffey FRICS  
Mrs. L Walter

### Introduction

1. This is a landlord's application under section 20ZA of the Landlord and Tenant Act 1985 (the Act) for the total dispensation of the consultation requirements imposed by section 20 of the Act (as amended by the Commonhold and Leasehold Reform Act 2002).

This dispensation being in respect of long term qualifying agreements for gas contracts and the sub 100 kw maximum demand non-half hourly-metered electric sites. The contracts are likely to be for a term exceeding 12 months with tenants' contributions in excess of £100 each.

The Respondents are the lessees of dwellings situated in the London Borough of Camden.

2. Directions for this hearing were issued on 18<sup>th</sup> April 2006. The Respondents did not make any comments in regard to the application nor comply with the directions.
3. At the hearing on 2<sup>nd</sup> June 2006, the applicant was represented by Ms Emma Howells, Home Ownership, Ms Kay Turton, Energy Manager and Mr. P Couper, Finance. No respondents were present. The landlord's application is fully set out in the Statement of case and in Ms Turton's report.

### Hearing

4. In summary, Ms Howells amplified the application by stating that Camden Council is seeking a 5-year dispensation from the consultation requirements because of the difficulties that Camden faces with regards to its fuel procurements, as highlighted in Ms Turton's report.

She said that following the Tribunal's directions, she wrote to the leaseholders outlining the nature of this application, and its effect.

She invited observations and directed leaseholders if they wished to become respondents to the application, to contact the Tribunal.

She received only 4 enquiries in which leaseholders were asking for a further explanation of the application and letter. She acknowledged that Camden had responsibilities to consult leaseholders in prescribed circumstances such as these.

The council proposed alternative consultation arrangements that would include presenting the information to leaseholders at the forum meetings and advertising the new contracts in the local papers

5. Ms Turton stated that the 'Over' and 'Under' Gas contracts were for housing sites using more than 25,000 therms per annum ("overs") and those using less than 25 therms per annum ("unders").

The Electricity contract will cover all council buildings and services powered by electricity.

She explained the fuel tendering process, and said that the landlord's aim is to minimize the risk and maximize opportunities.

She informed the Tribunal that Camden uses the procurement services of Kent County Council (KCC) who act as its agent for fuel tendering/purchase.

She agreed that she could not guarantee that the most advantageous price would be obtained as it was subject to market forces. However Camden sought to achieve the best prices available by using independent market analysis consultants; the Energy Information Centre and by maintaining a continuous market presence the use of KCC.

She concluded that the consultation requirements were incompatible with the procurement process in which suppliers submit prices on the basis that they can be withdrawn at short notice. Prices fluctuate daily and tenders often only last for a matter of hours. Indeed in one recent occasion an offer only lasted for 20 minutes.

6. Mr. Couper said that the landlord's aim is to act in the best interests of leaseholders and tenants. They can be disadvantaged by delay due to lengthy consultation. The most economically advantageous price is always accepted unless there were exceptional circumstances.

7. **The Law**

- (i) Section 20 of the Act limits the landlord's right to recover the costs of services provided under a long term agreement which exceed £100 for any lessee unless the landlord has either undertaken the comprehensive consultation requirements or has obtained a dispensation from all or some of the requirements from a leasehold valuation tribunal.
- (ii) Section 20ZA provides that a leasehold valuation tribunal may make an order to dispense with all or any of the consultation requirements in relation to any qualifying works or long term agreements if satisfied that it is reasonable to do so. A long-term agreement is an agreement for services, which will last for more than 12 months.
- (iii) The consultation steps that a landlord must undertake are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003 (S.I 2003 No.1987) "the Consultation Regulations".

As public notices must be given in respect of these contracts Regulation 5(2) applies. This provides "Where a 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.

In summary the steps that a landlord must follow are:

- (a) Section 1 requires the landlord to serve a notice in writing of his intention to enter into a long term agreement to tenants and any recognized tenants association. The Notice of intention must contain the specified details and invite the making of observations within specified time limits.
- (b) Secondly, the landlord must prepare a proposal in respect of the agreement detailing specified information, including a summary of the observations received and the landlord's responses to them.

- (c) Finally the landlord must give notice in writing of the proposal prepared enclosing a copy or stating where it maybe inspected and must again invite observations which he must have regard to if made.

### **Decision**

In determining the application, the Tribunal had regard to the submissions made, the papers supplied and the relevant law.

The consultation requirements provide leaseholders with an opportunity to comment and make observations to the landlord on any proposed qualifying works or long term agreements for which they maybe liable to contribute towards by way of service charges.

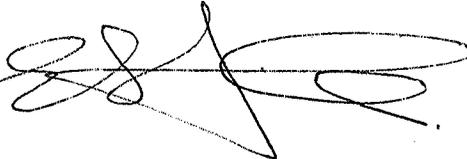
In this case the landlord is proposing alternative arrangements that do not fully comply with the statutory requirements. However, it is apparent that the leaseholders will be aware of the landlord's actions as it has undertaken to arrange alternative consultation as set out above and in the statement of case. It is in the leaseholders' interest that the landlord obtains the best price.

Given the fuel procurement process in which offers are only available for a short while and suppliers need a response within hours, it is our view that it would be impracticable for the landlord to comply with the lengthy consultation requirements as set out in Schedule 2.

In the circumstances the Tribunal decided that it is reasonable to dispense with all the consultation requirements of Schedule 2 for a period of 5 years.

**In so doing, the Tribunal has not considered the reasonableness of any costs incurred or to be incurred. Issues of reasonableness and liability to pay must be the subjects of separate proceedings.**

Chairman



Dated