

2099

LON/00AU/LDC/2006/0008

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985 as amended**

Applicant: London Borough of Islington

Respondent: Leaseholders at St. Luke's Estate

Premises: St. Luke's Estate, London, EC1V

Date of Hearing: 27 March 2006

Date of the Tribunal's Decision: 7 April 2006

Tribunal: Mr. Adrian Jack
Mr. F. L. Coffey FRICS
Miss R. I. Emblin JP

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: St Luke's Estate, London EC1V

Applicant: London Borough of Islington

Respondents: Leaseholders at St Luke's Estate

Case number: LON/00AU/LCS/2006/0008

Application: The landlord applies under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect a contract for concierge and security services.

Tribunal: Mr Adrian Jack,
Mr F L Coffey FRICS
Miss R I Emblin JP

Date of Hearing: 27th March 2006

Attending Hearing: The Applicant was represented by Mr Dovar of counsel, instructed by Ms Jarrett. Mr D Salenius and Mr N Eglington gave evidence. Mr J Scott was also present. None of the Respondents attended.

Written reasons

1. By an application dated 6th February 2006 the Applicant applied to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of a contract for concierge and security services with Mitie Trident Security Ltd.
2. St Luke's is a council estate just off the City Road in London EC1. From the sample leases provided to us it appears that in the late 1980's and early 1990's a large number of flats were sold to tenants under the right-to-buy legislation. Until recently the estate was managed by a Tenants Management Organisation ("TMO"). Unfortunately there seems to have been some internal dissention among the tenants. As a result the TMO resigned as managers with effect from 30th November 2005.
3. This resignation placed Islington in a difficult position. It has another seven estates in the southern area of the borough where the concierge and security functions are provided by Mitie Trident Security Ltd ("Trident"). The way Trident came to be appointed is this. Now-a-days public bodies, such as Islington, are required to tender publicly for large-scale contracts. The tender

process is both long and complicated. It starts with an advertisement in the Official Journal of the European Union. This Islington did as long ago as 8th April 2004. A large number of expressions of interest were received. A shortlist was drawn up, which was finally whittled down to two, from which Trident were selected. There was full consultation throughout with the tenants on the seven estates. The contract with Trident (which is actually with Homes for Islington Ltd, the vehicle through which Islington carries out the relevant functions) finally commenced in November 2005.

4. We are quite satisfied that the tender process was run in a proper and correct manner and that Trident were the properly appointed candidates for the concierge and security contracts on those seven estates.
5. Once the St Luke's TMO resigned, the obvious choice for taking over the concierge and security functions on the St Luke's Estate was Trident. This left the question whether the extension of the contract required Islington to carry out a fresh tendering procedure. Islington are reluctant to re-tender for three reasons. First Trident now have special knowledge of the Islington estates in the south of the borough and have dealings with the various interested parties such as the police. Second Trident were selected under a long and involved process which produced a fair result. Third using Trident would be in any event cheaper for the tenants than if a re-tendering process were necessary and in the event of such re-tendering, there is at least the risk that Trident would seek more money than under the existing contract.
6. Under the Public Contracts Regulations 2006, which Mr Dover took us through, the proposed extension of the existing contract with Trident to cover St Luke's Estate would be subject to "the restricted procedure" under Regulation 12(1)(b) (and thus require re-advertising) unless Islington was entitled to use "the negotiated procedure": see proviso (i) to Regulation 12(1). Regulation 14(1) provides:

"A contracting authority may use the negotiated procedure without the prior publication of a contract notice.... in the following circumstances:.... (d) in the case of a public works contract or a public services contract (i) ...when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with the contracting authority to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original public works contract or public services contract but which through unforeseen circumstances have become necessary, and such work, works or services (aa) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the contracting authority...."

The value of the additional works etc must not exceed 50 per cent of the value of the original contract: reg 14(4).

7. In our judgment Islington have established that the proposed contract with Trident falls within the definition of "the negotiated procedure." The additional contract for the St Luke's Estate is less than half the value of the contract for the other estates. If another contractor were used to provide the concierge and security services on St Luke's this would cause "major inconvenience" and we should add, not just to Islington, but we think also the tenants, because of the increased expense.
8. This takes us then back to section 20ZA of the 1985 Act. Under this section we have to be satisfied that it is reasonable to dispense with the consultation requirements under section 20 of the Act and the consequential regulations. For the same reasons as are outlined in paragraph 5 above, we are satisfied and accordingly we do dispense with those requirements.
9. Mr Dovar asks that we dispense with the consultation requirements in both Schedule 1 and Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003. These Schedules are mutually exclusive. Since we have considered that no public notice is required, the relevant Schedule in our view is Schedule 1, but if we are wrong about that we dispense with the consultation requirements in Schedule 2 in the alternative.

Determination

10. **We determine that pursuant to section 20ZA of the Landlord and Tenant Act 1985 the consultation requirements contained in Schedules 1 and/or 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 be dispensed with in respect of the proposed contract or proposed variation of the existing contract between the Applicant and/or Homes for Islington Ltd of the one part and Mitie Trident Security Ltd of the other in respect of the provision of concierge and security services at St Luke's Estate, London EC1V.**



Adrian Jack, Chairman