

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No.CHI/43UE/LDC/2008/0021

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
Section 20ZA of the LANDLORD AND TENANT ACT 1985 (as amended)**

Premises:	42 Levett Road, Leatherhead and other properties In England
Applicant:	Circle Anglia Housing Association
Respondents:	Lessees of shared ownership properties at Various addresses
Application:	18 June 2008
Directions:	18 July 2008
Consideration:	18 September 2008
Decision:	23 September 2008

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr A O Mackay FRICS

Summary of decision

The Tribunal agrees to dispense with part of the consultation requirements at Regulation 5(2) and paragraphs 4 and 5 of Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in relation to a Qualifying Long Term Agreement for the supply of gas and electricity.

Case No.CHI/43UE/LDC/2008/0021

43 Levett Road, Leatherhead and other properties in England

Application

1. This was an application received on 18 June 2008 made by Circle Anglia Housing Association under Section 20ZA of the Landlord and Tenant Act 1985, seeking dispensation of part of the statutory consultation requirements in respect of a Qualifying Long Term Agreement (QLTA).
2. Directions were issued on 18 July 2008. The Applicant complied with those Directions to the extent that a Statement in the form of a supplementary letter was provided by James Savill,

the Applicant's Group Procurement Manager. There was no response to the application from any of the potential Respondents, although the Directions specifically provided that any one Respondent, or a representative, was entitled to appear or to send notice of representation at least 7 days before the hearing date.

3. The Directions also made clear that the Tribunal was not asked as part of the application to decide whether any service charge costs would be payable or reasonable.
4. The matter came before the Tribunal on 17 September 2008 and was dealt with on the papers as neither party had requested a hearing.

Jurisdiction

5. The Tribunal has power under Section 20ZA of the Act to dispense with all or any of the statutory consultation requirements in relation to any qualifying works or qualifying long term agreement if it is satisfied that it is reasonable to do so.

Lease

6. The Tribunal had a copy of two specimen leases for a shared ownership house and flat. At Clause 3(4) of the former lease, the leaseholder of a house covenants "to contribute a fair proportion" of the landlord's reasonable costs of maintaining any "communal facilities" which includes walls, hedges, fences, access roadways and footpaths.
7. At Clause 1(2)(b) of the flat lease, the "common" parts are defined as the entrance, landings, lift, staircases and any other parts of the building or garden (if any) which are used in common with other occupiers. By Clause 5(3) and (4) the landlord is obliged to maintain and repair the building and the common parts, including keeping the common parts "adequately cleaned and lighted".
8. The flat leaseholder's obligation to pay service charges is to be found at Clause 7(2) and is to pay a specified proportion of the "service provision", which by 7(5) is the "all expenditure reasonably incurred by the landlord in connection with the repair management maintenance and provision of services for the Building". This is specified to include any costs "of and incidental to the performance of the landlord's covenants at 5(3) and (4), namely, those relating to the common parts..

Consideration

9. The Tribunal considered the matter by careful consideration of the papers on 17 September 2008 and found the following facts:

Facts

10. The Applicant is a registered social landlord with about 50,000 units ranging from detached and semi-detached houses and blocks of flats across England.
11. The Applicant wishes to enter into an agreement for either 12 or 24 months, depending on price, for the supply of gas and electricity to all sites for which the landlord is responsible (other than its office premises). According to the application form the current supply arrangement is due to end on 30 September 2008 so it is important to the Applicant to be able to enter into a competitive new contract at that time.
12. Mr Savill, for the Applicant, stated in the application form that the landlord intended to inform qualifying leaseholders of its intention to enter into such a contract. The Tribunal was provided with a copy of a Notice of Intention to enter into a Qualifying Long Term Agreement

dated 23 July 2008 (after the application to the Tribunal). It was not clear exactly who the recipients were, as Mr Savill stated that there could be 40,000 potential householders but to consult this number would potentially cost £40,000. 9,000 had been identified for consultation. He referred to these as leaseholders and tenants paying a "significant amount (over £10 currently)" but it was not clear to what this payment referred or over what period. The Tribunal presumed the Notice of Intention had been sent to those 9,000 tenants.

13. The application was to dispense with what Mr Savill called the "second stage" of the consultation process. For two main reasons the landlord did not wish to invite leaseholders to provide nominations for contractors. First, because of the highly specialized nature of the supply of utilities, this would not be appropriate or practicable, and the landlord had indeed already instructed a specialist broker, LSI Utility Brokers, to obtain tenders. Secondly, the second stage consultation would take too long, as due to the volatile nature of the market, suppliers would only hold quoted prices for a maximum of 48 hours.
14. The Notice of Intention described the services to be provided under the QLTA as "the supply of gas and electricity to communal areas such as stairwells and entrances etc, for which we as the landlord are responsible". The reasons for entering into the agreement were to "obtain on your behalf the best deal available" by "securing fixed prices for a fixed period, this will protect you from increased charges during this time". The application to the Tribunal was referred to and a copy of the Directions attached. Observations were invited on an attached pro-forma by 22 August 2008.
15. Mr Savill further submitted, and the Notice of Intention confirmed, that the landlord planned to keep the leaseholders and tenants informed of progress and the final tender outcome with brief reasons for the choice of supplier through newsletters, tenants associations.

Decision

16. The Tribunal first considered which of the statutory consultation requirements under Section 20 of the Act and Service Charges (Consultation Requirements) (England) Regulations 2003, applied to this situation. The Directions referred to Schedule 2 - Consultation Requirements for Qualifying Long Term Agreements for which Public Notice is required - and directed the Applicant to identify clearly the statutory consultation requirement, the extent of dispensation sought, and any legal submissions. Unfortunately neither the application for nor Mr Savill's Statement clearly addressed these points by reference to the Regulations.
17. In fact the Tribunal found the information supplied with the Application and in response to the Directions to be somewhat confusing and lacking in detail. For example, in the Application, it is stated that proposed agreement is for the supply of gas and electricity to all sites where the landlord remains responsible for payment. In the Statement it is stated that the purpose is to purchase utilities for communal areas. In the Notice of Intention it is also stated to be for communal areas for which the landlord remains responsible, yet confusingly the reason for entering into the agreement is said to be to protect the tenants from increased charges. There was a lack of substantive information about the nature, length, scope and value of the proposed agreement, and the potential cost to any leaseholders by way of service charges.
18. If, as the Application and Notice of Intention imply, the leaseholders are not liable to contribute to the cost of the gas and electricity supply under the QLTA, then there is by definition no need to consult at all, as the statutory requirements only apply where the contribution of any tenant within the relevant 12 month accounting period is to be more than £100. Again, the Application was vague about this but it was stated that out of 40,000 potential tenants 9,000 had been identified for consultation as they are likely to be paying "a significant amount for communal utilities in their service charge". This directly contradicts statements elsewhere that the landlord is responsible not only for the supply but also for payment of the gas and electricity to be provided under the QLTA.

19. The Tribunal noted, as set out in paragraphs 6-8 above, that under the lease terms for both the shared ownership house and flat, the service provision included maintaining either communal facilities (house) or maintaining and lighting of common parts (flat). The Tribunal was therefore prepared to accept that it was at least possible, despite what was stated in the Application, that some of the leaseholders might have a liability to contribute to the relevant costs and that therefore the consultation requirements might apply; in which case, the appropriate requirements were those in Schedule 2. As noted in the Directions, the question of payability and reasonableness of the amount of any service charges relating to the QLTA was not before this Tribunal in this Application and the Tribunal makes no determinations on this issue.
20. Despite the lack of detail the Tribunal was also prepared to accept that in general terms the landlord was seeking to protect its position by making this Application, and that in principle it was good estate management practice to seek a fixed price contract for the supply of gas and electricity in a rising market so as to provide best value for itself and its large number of tenants and leaseholders. It also accepted that the Notice of Intention broadly complied with the "first stage" of the consultation requirements set out in paragraph 1 of Schedule 2 and that it was only the "second stage", i.e. the preparation and notification of the landlord's proposal and the invitation of further observations, which the landlord wished to omit. The Tribunal saw the force of the argument that it was not realistic to wait for 30 days for such observations in a volatile and specialist market where a potentially advantageous offer was only held open for up to 48 hours. It also noted that the landlord was committed to keeping tenants and leaseholders informed of the progress and final outcome of the tender.
21. Finally the Tribunal gave weight to the fact that there were apparently no observations received from any leaseholders in response to the Notice of Intention (at least the landlord had not provided any evidence to this effect) and no response or objections received by the Tribunal to the Application. It was therefore reasonable in all the circumstances of the case to grant the dispensation sought.

Determination

The Tribunal therefore agrees to dispense with part of the consultation requirements at Regulation 5(2) and paragraphs 4 & 5 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in relation to a Qualifying Long Term Agreement for the supply of gas and electricity.

Dated 23 September 2008

Signed
Ms J A Talbot MA, Chairman