



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/00JA/LDC/2015/0005
Properties	:	Various properties in Herlington, Grove Court, Tower Court and Tyesdale, Peterborough
Applicant	:	Cross Keys Homes Ltd.
Respondents	:	all those long leaseholders and Residents' associations named in the application
Date of Application	:	24th March 2015
Type of Application	:	Application to dispense with consultation requirements in respect of a qualifying long term agreement (Section 20ZA Landlord and Tenant Act 1985 as amended ("the 1985 Act"))
Tribunal	:	Bruce Edgington – lawyer chair David Brown FRICS

DECISION

Crown Copyright ©

1. The tribunal determines that it is reasonable to dispense with the statutory consultation requirements of s.20 of the 1985 Act in relation an extension to the contract for the supply of gas to the properties for a period of 18 months ending on 30th September 2018 with SSE Energy Supply Ltd.

Reasons

Background

2. The tribunal received an application from the Applicant under Section 20ZA of the 1985 Act for dispensation from all of the consultation requirements contained in Section 20 of the 1985 Act in relation to the extension of a qualifying long term agreement for the supply of gas to the properties.
3. Notice of the application together with information from the First-tier Tribunal (Property Chamber) was given to the leaseholders of the properties affected by the proposed agreement by the Applicant. The relevant tenants' associations were also copied in. Any Leaseholder who might be affected by the application was invited to respond. None did.

Directions dated 26th March 2015 were issued. These were complied with by the Applicant who provided a statement of case.

4. The Tribunal informed the parties in directions that it considered that this matter was suitable for determination without a hearing, which determination would not be made before 12th May 2015. It was made clear that any party could ask for an oral hearing but none made any such request.

The Law

5. Section 20 of the 1985 Act limits the contributions of tenants to qualifying long term agreements entered into by landlords, unless the consultation requirements have been either complied with, or dispensed with, by this Tribunal. The detailed consultation requirements for qualifying long term agreements, are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations").
6. These require a notice of intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of a landlord's proposal. The landlord's proposal, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal and the landlord must give its response to those observations and there may be a duty to supply supplementary information.
7. 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable. A "qualifying long term agreement" is, subject to certain exceptions, an agreement entered into, by or on behalf of the landlord ... for a term of more than 12 months.

The Facts Found

8. The Applicant has a long term agreement for the supply of gas which was approved by this Tribunal in January 2014. However, it noted that the price of gas was being reduced by various suppliers and sought to re-negotiate the terms of that agreement or find out if another supplier would be amenable to quote for gas supplies. With the assistance of professional help, the existing supplier was persuaded to extend the existing agreement until 30th September 2018 on what the Applicant describes as an 'incredibly competitive quotation' which is estimated to save £41,863 or 14% on the current contract. Because of fluctuations in the prices for gas, suppliers will only hold quoted supply prices for a limited period which is less than the consultation period required by Section 20 of the 1985 Act.
9. The tendering process to be undertaken will only provide a very limited time to decide and accept which offer to take up. Prices quoted by the various utility companies will only be valid for a matter of hours or possibly days and will not be valid at the end of the required consultation period. In this case, the Applicant asked Utility Aid Ltd., an independent energy broker to deal with negotiations.

10. The Applicant wrote to the Respondents and the residents' association on the 13th March 2015 advising that they were going through this process.

Reasons for the Decision

11. The Tribunal was persuaded by the Applicant's case that the process used was the best way to procure the cheapest gas supplies for leaseholders, and that the best prices quoted would not be held for more than a few hours.

12. The cost of full consultation under schedule 2 of the Regulations and the increased price that would have to be paid for gas as a result of delay in awarding the contract would have to be met by leaseholders.

13. In making its decision to dispense with consultation on the application under s.20ZA of the 1985 Act, the Tribunal is not making a determination as to the liability of individual leaseholders to pay for the supply of gas in their service charges. That could only properly be made on an application under s.27A of the 1985 Act.

14. In the particular circumstances of this case the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements contained in s.20 of the 1985 Act and in schedule 2 of the Consultation Regulations.

.....
Bruce Edgington
Regional Judge
13th May 2015