1207

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LDC/2017/0093**
Property	:	**Various properties in the London Borough of Lewisham as set out in the schedule attached to the witness statement of Alan O'Connell**
Applicant	:	**Lewisham Homes on behalf of the London Borough of Lewisham**
Representative	:	**Clarke Willmott LLP**
Respondent	:	**The various leaseholders**
Representative	:	**Not known**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal member	:	**Tribunal Judge Dutton**
Date of decision	:	**3rd October 2017**
	:	

DECISION

DECISION

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of a Qualifying Long Term Agreement (QLTA) with Crown Commercial Services (CCS) for the procurement of energy supplies to the common parts of those properties, which contribute to same by way of service charge payments, under the provisions of s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. Previous applications seeking dispensation in respect of this matter have been made and granted by this Tribunal in past years.

3. The application states that the Applicant wishes to enter into a QLTA with CCS, it being "a central Government purchasing department employing commodity brokers to purchase aggregated government energy requirement from the energy market". The application says that the Applicant, "Lewisham Council has used this arrangement for over a decade with verifiable cost savings in comparison to in-house energy procurement. This form of procurement is considered best practice".

4. It is intended that the energy purchases will begin on 1st October 2017 and close on 31st March 2018, with supply contracts beginning on 1st April 2018.

5. The reason for the application is set out in the application itself and supported by a witness statement of Alan O'Connell an Energy Officer with the Applicant. The Applicant owns and manages a significant number of properties in the Borough providing heating and lighting to common parts in those properties. The service charge costs are likely to exceed £100 per property.

6. It is the Applicant's intention to enter into a 'risk managed flexible purchasing contract' with CCS, a central government procurement body who comply with the Pan Government Energy Project and fulfil the recommendations that all public sector organisations adopt aggregated, flexible and risk managed energy procurement. This method of procurement means that s20 of the Landlord and Tenant Act 1985 (the Act) cannot be complied with, hence this application.

7. The matter came before me for consideration as a paper determination on 3rd October 2017.

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[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

8. I had available to me a bundle of papers, which included the application, the directions and the statement of Mr O'Connell with exhibits. Those exhibits included the details of the leaseholders, a specimen lease, a copy of the Tribunal decision dated 5th December 2013 in case LON/OOAZ/LDC/2013/0100 and specimen letters to leaseholders informing them of this application and the need for same. A copy of what appeared to be a draft contract with British Gas Trading Limited was included

9. The directions included a questionnaire to be completed by any leaseholder who wished to oppose the application. The directions were slightly amended to provide for the application to be put on line with a proviso that any leaseholder who did not have access could ask for a hard copy.

10. There is no evidence on the Tribunal file that any leaseholder has objected although I do note that some have raised queries, which appear to have been answered.

11. The only issue for me to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the QLTA. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

12. I have considered the papers lodged. There is no objection raised by any leaseholders although enquires were raised and appear to have answered. Certainly there is no evidence of any leaseholder contacting this Tribunal to object.

13. It appears to me based on the evidence available that the procurement of energy on a Borough wide basis would be beyond the scope of an individual, or indeed a group of leaseholders. It is clearly technical and involves considerable expertise within a volatile market. I have not been made aware of any prejudice that such dispensation would cause to any leaseholder. Indeed I am told that this arrangement has produced "verifiable costs savings in comparison with in-house energy procurement".

14. I am satisfied that it is appropriate to dispense with the consultation requirements as set out in the Regulations[1]. My decision does not affect the right of any Respondent to challenge the costs should they so wish, it relates only to dispensation under the provisions of s20ZA of the Act.

Andrew Dutton

Tribunal Judge

Andrew Dutton 3rd October 2017

The relevant law

Section 20 of the Act

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Consultation requirements: supplementary
Section 20ZA

Where an application is made to the appropriate 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.

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.

The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or
in any circumstances so prescribed.
In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
Regulations under subsection (4) may in particular include provision requiring the landlord—
to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
to obtain estimates for proposed works or agreements,
to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
to give reasons in prescribed circumstances for carrying out works or entering into agreements.
Regulations under section 20 or this section—
may make provision generally or only in relation to specific cases, and
may make different provision for different purposes.
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.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).