



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case reference : **BIR/31UB/LDC/2022/0014 & 16(P)
BIR/31UE/LDC/2022/0012 & 15
BIR/34UF/2022/0017 & 18**

Property : **(1) Flat 36 Valley Drive, Leicester, LE3
3ED (0014)
(2) Flat 39a Valley Drive, Leicester. LE3
3EE (0016)
(3) Flat 38a Valley Drive, Leicester, LE3
3EE (0015)
(4) Flat 18 a Valley Drive Leicester., LE3
3ED (0012)
(5) Flat 4 Bassett Lowke House, 39 Johns
Street Northampton NN1
1EQ (0018)
(6) Flat 2 Bassett Lowke House, Johns
Street Northampton, NN1 1EQ (0017)**

Applicant : **EMH Housing and Regeneration Limited**

Representative : **None
(1) Kim Elaine Sherrif (0014)
(2) Aaron Anthony Kirk & Anthony
Charles Kirk (0016)**

Respondents : **(3) Gail Anne Foster (0015)
(4) Belinda Anne Taylor (0012)
(5) David Reynolds (0018)
(6) Alison Sellers (0017)**

Type of application : **An application under section 20ZA of the
Landlord and Tenant Act 1985 for
dispensation of the consultation
requirements in respect of a qualifying
contract and qualifying works.**

Tribunal members : **Judge P.J. Ellis
Graham Freckelton FRICS**

Date of Hearing : **1 September 2022**

Date of Decision :

September 2022

DECISION

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(1) The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of a proposal to enter a long-term qualifying framework agreement for the supply of windows to its properties

(2) The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of a proposal to enter a qualifying agreement for works relating to the supply of windows to the subject properties

Introduction

1. By applications which were received by the Tribunal on 5 May, 2022 the Applicant freeholder sought dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”)
2. The only issue for the Tribunal to determine under these applications is whether or not it is reasonable to dispense with the statutory consultation requirements. These applications do not consider the issue of whether any service charge costs will be reasonable or payable.
3. The Applicant seeks dispensation from all of the consultation requirements of Schedule 2 Service Charges (Consultation Requirements)(England) Regulations 2003 (“the Regulations”) in relation to firstly, a Framework Agreement originally entered into on 31 March, 2016 and subsequently extended, between Procurement for Housing (PfH)(of which the applicant is a member), Anglian Windows Limited and Improva Limited for the supply and/or installation of windows doors and associated products and secondly, as the Applicant proposes to instruct Anglian

Windows to carry out certain qualifying works in relation to the properties the subject of these applications, specifically the replacement of external windows. Further particulars of the proposed works were contained within the application form and accompanying documents.

4. Directions for determination of the application were issued on 8 June 2022 and required the Applicant to serve the Respondents with a copy of the application form and accompanying documents, but not the leases, and any other relevant documents including an acknowledgment form seeking the Respondents answer to the applications.

5. The documents supporting the application were the Framework Agreement of March 2016, the specification for the proposed call off works and a statement by Mr Philip Lobue, the commercial head of planned operations, made 5 January 2022. He explained that in December 2020 the Applicant approached Procurement for Housing and EEM Limited, providers of public property frameworks for the names of contractors for the supply and fitting of external windows. Two names were supplied who were asked to quote for the relevant work of fitting windows. Anglian Windows provided the lower quote and were appointed through the Framework Agreement which gave the Applicant the benefit of contractual arrangements set out in the Framework Agreement.

6. The Respondents do not oppose the applications although Mr Kirk, Respondent 2, in his response by email to the Tribunal, referred to earlier correspondence with the Applicant by which he had asked for a breakdown to clarify what the works involve but he expressly stated he did not oppose the application. He stated he would require a payment plan for himself in respect any costs incurred and recoverable through the service charge.

The Statutory Framework

7. Section 20 of the act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedure landlords must follow in order to recover through the service charge costs incurred in connection with a qualifying long-term agreement or qualifying works. They are particularised collectively in the Regulations.

8. There is a statutory maximum that a lessee has to pay by way of a contribution to a qualifying long-term agreement unless the consultation requirements have been

met or dispensation from those requirements has been granted. A qualifying long-term agreement is an agreement for more than 12 months where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100.00. In addition, there is a statutory maximum that a lessee has to pay by way of contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the regulations section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.

9. S20ZA provides that:

(1) 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.

The Reason for the Application

A. The Framework Agreement

10. By its submission the Applicant explained it had not consulted as required under the legislation but submitted that it could not do so because the procurement of the Framework was the subject of public notice and associated regulations designed to achieve best value. Therefore, the Applicant could not under Schedule 2 of the Regulations nominate any contractor from whom it or PfH should have sought price comparisons.

B The Qualifying Works

11. The Applicant submits that because the call off contract for the relevant works was entered into pursuant to and under the Framework Agreement the Applicant had the benefit of the indicative starting rates included in the Call Off Contract which was designed to ensure best value.

12. In both cases the Applicant submitted that the Respondents had suffered no prejudice because of the procedure involved in negotiating a Framework agreement. Further, the Respondents are entitled to make observations in accordance with Schedule 3 of the Regulations and ultimately refer the charges to the Tribunal for a

determination of their reasonableness. Also, the Applicant apologised for its omission on this occasion as a result of employee oversight.

Discussion and Decision

13. There is no objection to these applications by the Respondents. No issues have been raised regarding the terms of the lease and the respective obligations it imposes upon the parties. However, the Tribunal must be satisfied under s20ZA that it is reasonable to dispense with consultation requirements.

14. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 (“*Daejan*”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20.

15. In this case the Tribunal is satisfied the Applicant has acted reasonably in entering a Procurement Framework Agreement which is a mechanism for ensuring best value for the benefit of the tenants. There is no complaint that the work is not necessary. The leaseholders are not prevented from challenging the reasonableness of any service charges arising from the relevant work.

16. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements in respect of both the Framework agreement and the qualifying works associated with replacement of external windows.

Appeal

17. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Tribunal Judge PJ Ellis.