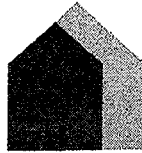


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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 20ZA OF THE LANDLORD ACT 1985**

Reference number: LON/00AL/LDC/2006/0014

Property: Leasehold Dwellings in the London Borough of Greenwich acquired under the Right to Buy Scheme

Applicant: London Borough of Greenwich

Respondents: All Right to Buy Leaseholders in the London Borough of Greenwich

Tribunal: Mr A J Andrew
Mr L Jacobs FRICS
Mrs S Baum JP

Application Dated: 21 February 2006

Directions: 12 April 2006

Determination: 31 May 2006

Date of Decision: 20 June 2006

DECISION

1. We dispensed with the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 ("the Act") in relation to the Applicant's proposal to extend a contract with Corona Energy for the borough wide supply of gas for a period of two years from 1 November 2006 ("the Contract").

THE FACTS

2. On the basis of the document bundle prepared by the Applicant, we found the following relevant facts: -
 - (a) The Applicant previously purchased gas under fixed price long term contracts. The last such contract expired at the end of October 2005. The recent unprecedented volatility in the gas supply market made it impracticable, if not impossible, for the Applicant to continue purchasing gas in that manner;
 - (b) Accordingly, in August 2005, the Applicant decided to purchase future gas supplies under a variable price contract. In essence, the supplier's transportation costs, management fees and profit margin are fixed for the duration of the contract but the gas is paid for at the market rate prevailing when the orders, for the supply of gas, are placed. Such a contract enables the Applicant to purchase gas at times of its own choosing and at the most advantageous prices available, instead of fixing the price for the full term of the contract;
 - (c) The Applicant appreciated that such a contract for a term in excess of 12 months would have been a "qualifying long term agreement" as defined in Section 20ZA of the Act and hence the statutory consultation requirements would have applied. It therefore decided to let the contract for a term of exactly 12 months;
 - (d) The Contract, for a term of one year from 1 November 2005, was let under the EU procurement directives. That is notice of the proposed contract was placed in the official journal of the European Union and the award of the contract to Corona Energy was subject to a process of competitive tender. The Contract however incorporated an option to extend the contract term for a period of two years;
 - (e) The Contract expires on 31 October 2006 and the Applicant wishes to exercise the option, contained in the contract, to extend the contract term for a further two years;
 - (f) The Applicant considered that the exercise of the option would bring the Contract within the definition of a qualifying long term agreement and hence on 21 February 2006, it applied to the tribunal under Section 20ZA of the Act, for a determination that we dispense with the consultation requirements contained in Section 20 of the Act;

- (g) On 5 April 2006, in two local papers, the Applicant gave general notice of its application and of the Pre-Trial Review to be held on 12 April 2006. Notwithstanding that notice, none of the Respondents attended the Pre-Trial Review. At that Pre-Trial Review the tribunal directed that a further advertisement be placed in two local papers notifying readers (a) that any person wishing to be joined as a Respondent should apply to the tribunal by 15 May 2006 and (b) that the Application would be heard on 31 May 2006. This Direction was complied with and no one applied to the tribunal to be joined as a Respondent;
- (h) The Directions also provided that if no one applied to the tribunal to be joined as a Respondent, we would determine the application on the basis of the papers filed by the Applicant and without an oral hearing. No such application having been made, we proceeded to deal with the application in that way.

REASONS FOR OUR DECISION

3. On the basis of the application, the Applicant appeared to be applying for retrospective dispensation from all the consultation requirements insofar as they related to the Contract let from 1 November 2005. To that extent we considered the application to be misconceived. The Applicant was in reality seeking dispensation from the consultation requirements insofar as they related to its decision to extend the contract for a further period of two years. The relevant consultation requirements are those contained in Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulation 2003 ("the 2003 Regulations"). They provide for a two stage consultation process. The landlord first serves a Notice of Intention and subsequently a Proposal Notice. We fully accepted that where, as in this case, the contract provides for the purchase of a commodity at future market rates it is impossible for the landlord to comply with the entirety of paragraph 4 of Schedule 2 of the 2003 Regulations because it is impossible to estimate the proposed cost of the gas, which will be purchased at future market rates. Nevertheless we saw no reason why the Applicant could not have complied with the remainder of the Schedule insofar as it related to its proposed decision to exercise the option to renew the contract. It appeared self-evident that an alternative course of action, to exercising the option to extend, would have been to resubmit the contract to competitive tender.
4. Nevertheless the Applicant had not attempted to comply with any part of the statutory consultation requirements and now sought dispensation from all of them. In theory there would be sufficient time to require the Applicant to at least comply with the provisions of paragraphs 1, 2 and 3 of Schedule 2 by serving Intention Notices on all the long leaseholders and having regard to any observations received. However, we appreciated that in practice the Applicant's hands were tied. Even if some of the long leaseholders suggested re-tendering the contract rather than exercising the option to extend the existing term, there would not be sufficient time to complete that process before the period, during which the option to extend could be exercised, expired.

5. In such circumstances we therefore had to consider whether it would be appropriate to grant dispensation. The relevant statutory provisions are to be found in subsection 20ZA(1) of the 1985 Act under the heading "*Consultation Requirements: Supplementary*". That subsection reads as follows: "*Where an application is made to a leasehold valuation 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*".
6. Although we clearly had to take into account all the circumstances of the case, we considered that there were two principal factors that should be considered in the exercise of our discretion. The first was the behaviour of the Applicant and the second was the extent of any prejudice to the Respondents.
7. The Applicant had taken expert advice from market analysts before deciding to let a variable price contract and on the basis of the documents supplied to us, that approach had resulted in significant savings that had benefited the Respondents. It had also obtained Counsel's opinion on the contract terms and the procurement process under the EU procurement directives. Having acted throughout with the benefit of professional advice and with the intention of obtaining "best value" both for itself and the Respondents we considered that the Applicant had behaved reasonably.
8. The Contract had originally been let on the basis of a competitive tender and if the option were exercised, it would presumably be continued on the same terms, which had been tested in the market place. Furthermore, the decision to purchase gas under a variable price contract had proved beneficial and given the continuing volatility in the market there was no reason to believe that the extension of the contract would not continue to provide best value in the purchase of gas. Despite the advertisements referred to above, none of the leaseholders had responded or requested to be joined as a Respondent. Furthermore, the long leaseholders would still enjoy the protection of Section 27A of the Act so that, if any of them considered that the costs paid for the supply of gas were unreasonable, they would still be entitled to apply to the tribunal for a determination of their liability to pay the resultant service charge. Thus we considered that there had been no prejudice to the Respondents.
9. For each and all of the above reasons, we concluded that it would be appropriate to exercise the discretion conferred on us by Section 20ZA of the Act by dispensing with the consultation requirements in relation to the Applicant's proposals to exercise the option to extend the term of the Contract for a further two years.

Chairman:.......... (A J Andrew)

Date: 20 June 2006