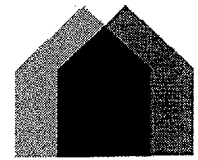


LON/00BE/LDC/2006/0083

**APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985
(AS AMENDED)**



**Residential
Property
TRIBUNAL SERVICE**

Premises: Council dwellings with Communal Heating Systems in the London Borough of Southwark.

Applicant: London Borough of Southwark.

Represented by: Mrs C Blair - Works Manager
Mr Fiddek - Sustainability Manager

Respondents: All Residential Leaseholders with Communal Heating Systems in the London Borough of Southwark.

Appearances: None

Application date: 19 October 2006

Hearing date: 20 December 2006

Decision date:

Members of the Leasehold Valuation Tribunal:

Mr J Sharma JP FRICS (Chairman)
Ms T Downie MSc

Decision

1. The application is granted. In respect of 2 long term contracts for the supply of gas to residential central boilers in about 200 block of flats by the London Borough of Southwark, the requirements of Schedule 2 paragraphs 3 and 6 of the Service Charge (Consultation Requirements) (England) Regulations 2003 are hereby dispensed with.

Background

2. This Tribunal received an application made under Section 20ZA of the Landlord and Tenant Act 1985 from the London Borough of Southwark dated 19 October 2006 seeking dispensation from part of the relevant consultation requirements set out in Schedule 2 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (the Regulations) in respect of 2 long term contracts which it has entered into for the supply of gas to residential central boilers in about 200 blocks of flats.
3. Directions for hearing were issued by a Tribunal on 1 November 2006. In compliance with Direction 2, the applicant notified the respondents, tenants' associations and other tenants' representatives of the application and the Directions. However none of the respondents contacted either the applicant or the Tribunal and none attended or was represented at the hearing on 20 December 2006.

The Law

4. Section 20 of the Landlord and Tenant Act 1985 requires landlords to consult with tenants who are required to pay more than £100 per annum for any contract that exceeds 12 months in duration ("A qualifying long term agreement"). The Regulations in particular set out the form and content of notices to be served under the Act. Schedule 2 provides the consultation requirements for a qualifying long term agreement for which public notice is required.
5. Paragraphs 3 and 6 of Schedule 2 state:-
"Where within the relevant period observations are made in relation to the landlord's proposal by any tenant or Recognised Tenants' Association, the landlord shall have regard to those observations".
6. In addition to the Schedule 2 requirements, section 7(1) of the Regulations provides that where qualifying works are part of a qualifying long term agreement the landlord must also comply with the consultation requirements in Schedule 3 in respect of those works.
7. Where Section 20 applies to any qualifying works or a qualifying long term agreement, the service charge payable by a tenant is capped unless the consultation requirements have either been complied with or dispensed with by a leasehold valuation tribunal.

8. By Section 20ZA(1) where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements, the tribunal may do so if it is satisfied that it is reasonable to dispense with the requirements.

The Hearing

9. Mrs Blair for the applicant said that the Council has entered into 2 contracts for the supply of energy to its estates:
 - 1) Supply of gas to sites consuming less than 25,000 therms. Current contract expired on 31 October 2006.
 - 2) Supply of gas to sites consuming more than 25,000 therms. Current contract due to expire on 31 January 2007.
10. She said that the contacts were long term agreements subject to EU Public Notice requirements. It is expected that the contracts will result in charges in excess of £100 within any one financial year for some leaseholders, and consequently it is necessary to carry out statutory consultation under Schedule 2 of the Regulations.
11. Because of the volatile nature of the energy market, the procurement process differs from the traditional method of procuring contracts. The Council use LASER (Local Authorities South East Region), a non profit making organisation that uses internal and external sources of market intelligence to determine and advise on the optimum time to request prices. Because prices are held for only a very short period of time, LASER undertake the tender process on behalf of the Council, evaluating and accepting tenders electronically.
12. In the circumstances, it was not possible to serve Notice of Intention in advance of the tendering process and the contracts have already been negotiated. The Council are therefore proposing to combine the terms of both the Notice of Intention and the Notice of Proposals in one Notice and offer a 30 day period in which to make observations that will run after the contracts have been let.
13. Mrs Blair said that all energy contract tenders are carried out in accordance with EC Public Procurement Directives, so tenderers have to comply with the relevant financial checks, which are undertaken by LASER. Once the electronic tender is complete, LASER sends the results by e-mail to the Council for analysis and an award decision.
14. Tender prices are received from all suppliers for 12 and 24 month duration contracts, as these are the contract lengths offered by suppliers. Prices are received on a site by site basis rather than quoting a single price for all sites. As sites with irregular consumption patterns tend to attract higher unit energy prices, if a single price were quoted for all sites this would mean some clients would be subsidising others. Quotes are evaluated according to price, to see

which supplier and which contract length offers the best long term value for the Council, taking into account market analyst predictions for future market trends.

15. Due to the volatility of the energy markets, a decision usually needs to be made within half a day of the tender prices being offered. For gas costs, it is becoming increasingly common that only a few hours are allowed before the suppliers retract their prices. The council therefore has to act quickly to analyse, select and respond by e-mail to the tender prices received to ensure the best available prices are secured.
16. The applicant proposes to serve both Notice of Intention and Notice of Proposal retrospectively and intends to serve a combined Notice that covers the requirements of both Notices. The Notice will explain the scope of the contract and the reason for it, and will also identify the unit rates per kilowatt hour for both contracts. Although the Council was unable to give the inferred 30 days before letting the contract, it is intended to allow 30 days for observations during which they will be given due regard. All other aspects of both Notices will be complied with.
17. In answers to questions by the Tribunal, Mrs Blair said that the timing of the contracts was based on advice from LASER and accepted that the Council systems should have ensured an earlier start to the Section 20 consultation procedures as the expiration dates of the existing contracts were known. She said that if the application is not granted, the council may not be able to recover the full cost of gas from those leaseholders who actually benefited from the service.

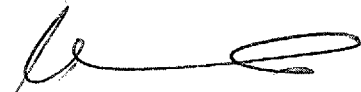
Tribunal's reasons for granting the application

18. The Tribunal was of the view that the applicant, being aware of the termination dates for existing contracts, should have started the statutory consultation requirements early enough to accommodate the 30 days observation period in the Notice of Intention. However once the bidding process was triggered by LASER, the Tribunal accepted that the nature of the contracts would not have allowed sufficient time to comply with the consultation requirements time limits for observations.
19. The Tribunal had regard to the structured tender process for the contracts and evaluation and the extend of the applicant's proposed consultation with the respondents; albeit part of it retrospectively. It was of the view that the Council believed it had acted and is acting in the best interest of the respondents.
20. In all the circumstances and as the partial dispensation sought is very limited the application is granted.
21. **It should be noted that this dispensation does not determine that costs incurred by the Council under the contracts and levied as service charges will be regarded as payable or reasonable. Also the Tribunal**

was not asked and did not form a view as to whether the retrospective service of the Notice of Intention and Notice of Proposal, subject to the partial dispensation granted, meets with the requirements of Section 20 consultation.

22. The applicant is asked to notify the respondents of this decision.

Tribunal:

CHAIRMAN 

DATE 15.1.07