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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AA/LDC/2012/0011

**Premises:** The Barbican and other housing estates

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**Applicant:** The Mayor and Commonalty and Citizens of the City of London

**Representative:** The City Solicitors' Department

**Respondents:** All long leaseholders of the City of London

**Leasehold Valuation Tribunal:** Mr NK Nicol  
Ms S Coughlin MCIEH

**Date of decision:** 30<sup>th</sup> March 2012

### **Decisions of the Tribunal**

- (1) Dispensation is granted from the consultation requirements in paragraphs 4 to 8 of Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 for the purposes of entering into contracts for the supply of electricity from 1<sup>st</sup> April and 1<sup>st</sup> October 2012 and for the supply of gas from 1<sup>st</sup> October 2012.
- (2) The Tribunal refuses the application for a general dispensation from the consultation requirements for any further period.

### **Background**

1. The Applicant applied on 27<sup>th</sup> January 2012 for the dispensation of consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985. The Respondents are all the holders of long leases on the Applicant's estates.
2. The Tribunal issued directions on 2<sup>nd</sup> February 2012. The Applicant provided an example of the letter they sent to the Respondents in accordance with the directions. The Tribunal is satisfied that the Respondents have had an opportunity to take part in these proceedings. The only responses have been a small number of returned forms ticking the boxes indicating that they supported the Applicant's dispensation application.
3. The Tribunal proceeded to determine the application on the papers, without a hearing, in accordance with the directions.

### **The Law**

4. The aforementioned s.20 limits financial contributions of lessees in respect of qualifying long term agreements entered into by landlords unless the consultation requirements have been complied with or, alternatively, dispensed with by a Tribunal under s.20ZA(1). The test for dispensation is whether the Tribunal is satisfied that it is reasonable.
5. A "qualifying long term agreement" is, subject to certain exceptions which do not apply here, an agreement entered into, by or on behalf of a landlord, for a term of more than 12 months – s.20ZA(2).
6. The detailed consultation requirements for qualifying long term agreements, which in this case require a public notice, are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003. They apply to agreements which result in an individual lessee being required to contribute £100 or more.

7. There are two principal stages in the required consultation process. The first, which the Applicant has complied with (see further below), is to serve a notice of intention setting out what is proposed and giving lessees an opportunity to inspect relevant documents and to make observations, to which the lessor must have regard (see paragraphs 1-3 of Schedule 2 to the Regulations).
8. The second stage is to prepare a full detailed proposal which must be notified to all lessees so that they may make observations. It is this second stage from which the Applicant claims to need dispensation (see paragraphs 4-8 of Schedule 2 to the Regulations).
9. The relevant legal provisions are set out in the Appendix to this decision.

### **The Application**

10. The Applicant arranges for the supply of gas and electricity to its estates, save for the Barbican estate which only receives electricity. The three contracts for the supply of electricity terminate on 31<sup>st</sup> March and 30<sup>th</sup> September 2012. The contract value for the supplies commencing immediately thereafter are estimated at around £500,000 and £4.5m. The contract for the supply of gas terminates on 30<sup>th</sup> September 2012 and the contract value for the successor supply is estimated at £1m.
11. Most lessees pay less than £100 for either of the gas or electricity arranged by the Applicant. In respect of electricity, there are about 1,840 lessees who pay more on the Barbican estate, 44 at Middlesex Street and 40 at York Way. In respect of gas, the Applicant did not provide similar figures.
12. Bidding for the contracts and the supplies to be obtained is done on behalf of the Applicant, and around 67 other local authorities, by the Local Authorities South East Region Energy Buying Group, known as LASER, which is managed by Kent County Council. It is LASER which ensures that the tendering process complies with the relevant EU Directives, English law and local government requirements, including the advertising of relevant OJEC notices.
13. The Applicant has submitted that the utility market is a commodity market for which the price is only offered for a short, limited period of time, primarily because generators and suppliers sell their produce to traders in the market. Offers are normally open for acceptance until 4pm on the same day. This can be extended by agreement but this increases the risk of adverse price movements. The increased risk is reflected in the price, resulting in a more expensive supply. Supply contracts may be less than 12 months but the Applicant wants the flexibility to take advantage of favourable prices and the possibility of entering into fixed term contracts of up to 2 years.
14. The Applicant has consulted its long leaseholders to a certain extent, as it was indicated they should in previous decisions (LON/00AA/LDC/2005/002 and

LON/00AA/LDC/2007/0028). They sent out letters dated 28<sup>th</sup> November 2011 providing the details required for a notice of intention. They received a few telephone queries in response but no written observations.

#### **Dispensation for current purposes**

15. Neither the Applicant nor the Tribunal received any representations from any potential Respondents to the Application so it must be assumed that there are no objections to the proposals.
16. In order to obtain the best gas and electricity prices, the Applicant needs to be able to act within hours. Waiting for the expiry of the statutory 30-day time limit would severely limit their ability to achieve the best prices. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the remaining requirements under paragraphs 4 to 8 of Schedule 2 to the Regulations.
17. It should be noted that, of course, the decision to dispense does not determine for the purposes of s.27A of the Act that the costs incurred by the Applicant under the proposed agreements are to be regarded as reasonable or the resulting service charge to be payable.

#### **Dispensation for a further 5 years**

18. The Applicant also applied for the Tribunal to grant dispensation for a period of 5 years to avoid their having to apply yet again within two years or so. They pointed to this kind of dispensation being made by the Tribunal for the benefit of the London Borough of Camden in a case heard on 2<sup>nd</sup> June 2006 (LON/00AG/LDC/2006/0025).
19. However, the Tribunal specifically warned the Applicant in paragraph 15 of the decision issued on 8<sup>th</sup> August 2007 (LON/00AA/LDC/2007/0028) that the Tribunal would need persuading that it had the power or jurisdiction to do this. Making the assertion that it would be expedient to grant such a lengthy and non-specific dispensation is not persuasive. The judgment of another Tribunal is not binding and the Camden decision does not contain any legal reasoning justifying the order made.
20. As the Tribunal understands it, the application is for dispensation from all statutory consultation requirements for 5 years. However, there is no basis for dispensation from the first stage. This decision grants dispensation only from the requirements of the second stage. In the absence of any sound submissions to the contrary, the Tribunal does not believe it has jurisdiction to give blanket dispensations from all the statutory requirements based purely on hypothetical circumstances, however likely they might be to arise, nor for such a long period of time.

21. Therefore, the Tribunal declines to grant any dispensation other than that necessary to deal with the gas and electricity supply contracts which terminate on the aforementioned dates in 2012.

Chairman: N.K. Nicol  
NK Nicol

Date: 30<sup>th</sup> March 2012

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### **S20 Limitation of service charges: consultation requirements**

- (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.

#### **S20ZA Consultation requirements: supplementary**

- (1) 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.
- (2) 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) 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.

### **Service Charges (Consultation Requirements) (England) Regulations 2003**

#### *Application of section 20 to qualifying long term agreements*

#### **Reg. 4**

- (1) Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

#### *The consultation requirements: qualifying long term agreements*

#### **Reg. 5**

- (1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.
- (2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

## **SCHEDULE 2 CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS FOR WHICH PUBLIC NOTICE IS REQUIRED**

### *Notice of intention*

#### **Para 1**

- (1) The landlord shall give notice in writing of his intention to enter into the agreement—
- (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
- (a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;
  - (b) state the landlord's reasons for considering it necessary to enter into the agreement;
  - (c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

- (d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;
- (e) invite the making, in writing, of observations in relation to the relevant matters; and
- (f) specify- (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends.

*Inspection of description of relevant matters*

**Para 2**

- (1) Where a notice under paragraph 1 specifies a place and hours for inspection
  - (a) the place and hours so specified must be reasonable; and
  - (b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to relevant matters*

**Para 3**

Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Preparation of landlord's proposal*

**Para 4**

- (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.
- (2) The proposal shall contain a statement-
  - (a) of the name and address of every party to the proposed agreement (other than the landlord); and
  - (b) of any connection (apart from the proposed agreement) between the landlord and any other party.
- (3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party-
  - (a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.
- (5) Where-
  - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
  - (b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,



the proposal shall contain a statement of the amount of that estimated expenditure.

- (6) Where-
- (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and
  - (b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates,
- the proposal shall contain a statement of that cost or rate.
- (7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.
- (8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement-
- (a) that the person whose appointment is proposed-
    - (i) is or, as the case may be, is not, a member of a professional body or trade association; and
    - (ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and
  - (b) if the person is a member of a professional body trade association, of the name of the body or association.
- (9) Each proposal shall contain a statement of the intended duration of the proposed agreement.
- (10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

#### *Notification of landlord's proposal*

#### **Para 5**

- (1) The landlord shall give notice in writing of the proposal prepared under paragraph 4-
- (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall-
- (a) be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;
  - (b) invite the making, in writing, of observations in relation to the proposal; and
  - (c) specify-
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

#### *Duty to have regard to observations in relation to proposal*

#### **Para 6**

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.

#### *Landlord's response to observations*

#### **Para 7**

Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing

to the person by whom the observations were made, state his response to the observations.

*Supplementary information*

**Para 8**

Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)-

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.