(2654)

Ref: LON/00BE/LDC/2006/0036 & 0037

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

DETERMINATION

OF ISSUES UNDER SECTIONS 20ZA OF THE LANDLORD AND TENANT ACT 1985 (as amended)

PROPERTY:	**AYLESBURY, BRANDON AND NORTH PECKHAM ESTATES**
Applicant:	LONDON BOROUGH OF SOUTHWARK
Respondents:	LESSEES OF SOUTHWARK COUNCIL
Hearing:	2nd August 2006
Inspection:	N/A
Appearances:	
Applicant:	Miss Turff – Capital Works Manager Ms R Murray – Interim strategy Manager Mr Fiddik – Sustainability Manager

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr F L Coffey FRICS
Mr D Wilson JP

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BE/LDC/2006/0037

IN THE MATTER OF THE AYLESBURY, BRANDON AND NORTH PECKHAM ESTATES

AND IN THE MATTER OF SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

BETWEEN:

LONDON BOROUGH OF SOUTHWARK

Applicant

-and-

THE LESSEES OF SOUTHWARK COUNCIL

Respondents

THE TRIBUNAL'S DECISION

Background

1. The Applicant makes two applications pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") in this matter. The first application is made to dispense with the consultation requirements imposed by s.20 of the Act in relation to the cost of providing gas and electricity to the Aylesbury, Brandon and North Peckham estates respectively ("the first application"). The second application is also made to dispense with the consultation requirements imposed by s.20 in relation to five various consultancy contracts for future

major works projects within the borough ("the second application"). Each of these applications is considered in turn below.

2. It is common ground that the subject matter of both applications are qualifying long term agreements within the meaning of s.20 of the Act and that the Applicant is required to consult the Respondents in accordance with Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").

3. In relation to the gas and electricity contracts that form the subject matter of the first application, the Applicant has served a Notice of Intention on the Respondents of its intention to enter into those qualifying long term agreements. Dispensation is sought not only for the 30 day period allowed by the Regulations for the Respondents to make any observations to the Applicant in response to the Notice of Intention but also the subsequent consultation requirements imposed on the Applicant by the Regulations.

4. The basis on which the first application is brought is because the Applicant is unable to comply with the remaining consultation requirements on a practical way because of the way in which the energy contracts are let. Apparently, this is done through an online electronic tendering process in a blind auction on the energy "spot" market. This enables energy prices to be fixed with suppliers on the most favourable prices for contracts of between 12 and 24 months in duration. The tender results are known by the Applicant at very short notice and it is for this reason that the Applicant is not able to comply with either the

30 day observation period or other consultation requirements imposed by the Regulations. The Tribunal was told that the gas and electricity supply contracts had been let in June and November 2005 respectively. This application was, therefore, being made retrospectively. The reason given for the delay in making the application was that the member of staff who had conduct of this matter had left the Applicant's employment without having made the application to dispense and this was not discovered until January or February of this year.

5. The second application is made in relation to the Applicant's proposal to enter into five qualifying long term agreements to retain building surveyors, building services engineers, planning supervisors, project mangers and structural engineers. The Applicant seeks to dispense with the requirement of having to prepare a proposal setting out the leaseholder's estimated contribution or the total expenditure for these proposed agreements and of having to serve a notice of proposal subsequently. The reason given by the Applicant for making this application is that the consultants are retained to supplement in-house resources when required in the future. The consultants' remuneration is calculated as a percentage of any total contract price. As that figure was unknown at the present time, it was not possible for the Applicant to meaningfully or sensibly consult the Respondents in accordance with the Regulations.

Decision

6. The hearing in this matter took place on 2 August 2006. The Applicant was represented by Miss Turff, a Capital Works Manger employed by the Applicant. She was assisted by Ms Murray and Mr Fiddik who are also employed by the Applicant as an Interim Strategy Manager and a Sustainability Manager respectively. None of the Respondents attended the hearing nor were they represented. The Tribunal did not inspect the subject premises, as it was not necessary to do so. This matter was determined solely on the basis of the submissions made by Miss Turff and the documentary evidence adduced on behalf of the Applicant. The submissions made by Miss Turff effectively repeated those matters already set out above and contained in the Applicant's statements of case. The Tribunal may only grant an application brought under s.20ZA of the Act where it is satisfied that it is reasonable to do so in the circumstances.

(a) The First Application – Gas and Electricity Supply Contracts

7. At the hearing, the Tribunal informed Miss Turff that it was prepared to grant this application as sought limited to the dispensation with the consultation requirement imposed by the Regulations to allow the Respondents a 30 day period in which to notify the Applicant of any observations they wish to make in relation to both contracts. The Tribunal's reasons for doing so were as follows:

   (a) that in a rising energy market, the Respondents had financially benefited from the Applicant being able to fix the prices for the supply of gas and electricity at the prevailing market rate in June and

November 2005. In other words, the Respondents had suffered no financial prejudice.

(b) that the electronic tendering process did not allow the Applicant sufficient time to properly consult in accordance with the timetable envisaged by the Regulations. A decision is required from the Applicant within half a day of the tender price being offered.

(c) it accepted that the e-tendering process encouraged energy suppliers to competitively tender for energy contracts and that the Applicant's contracts had not been issued until market conditions were favourable at the prevailing time.

(d) that the Applicant intended to nevertheless serve a Notice of Proposal on the Respondents and to otherwise comply with the other consultation requirements imposed by the Regulations.

(e) that by granting the application, none of the Respondents were precluded from challenging these costs when they had been apportioned to each service charge account.

(b) The Second Application – Consultancy Contracts

8. The Tribunal was not prepared to grant this application. It did not accept the submission made by Miss Turff that the Applicant could not meaningfully consult with the Respondents in the absence of precise figures as to the actual costs that would be charged by one or more of the various consultants. The Tribunal accepted that it was not possible to do so at the present time because each of the consultants' fees were charged as a percentage of any total contract

price and the Tribunal was told that no major programme of works was being proposed in the near future by the Applicant.

9. However, at the hearing, the Tribunal was taken through the evaluation process used by the Applicant when deciding whether any tender submitted by one or more of the proposed consultants should be accepted. This evaluation had been prepared by the Applicant's quantity surveyor to enable the Applicant to determine whether any such tender was cost effective. In the Tribunal's judgement, whilst the evaluation documentation did not provide precise information as to the actual cost of each proposed consultant, nevertheless, there was sufficient financial detail within each of the evaluation to enable the Applicant to consult with the Respondents within the meaning of Schedule 2 of the Regulations.

10. Indeed, paragraph 4(7) of Schedule 2 specifically provides for exactly the situation the Applicant finds itself in regarding these proposed contracts. Paragraph 4(7) states that where a landlord is unable to provide an accurate estimate in its Notice of Proposal, it must state the reasons why and to provide a date when such an estimate, cost or rate can be provided. That explanation ought to be provided to the Respondents by the Applicant. Whilst consultation borough wide may place an onerous burden on the Applicant, this is not a consideration the Tribunal must bear in mind when determining this application. The Act and the Regulations do not exempt local authorities, as major landlords, from consulting with their tenants or leaseholders. No doubt, had Parliament intended to confer this exemption on local authorities it would

have done so and no such exemption exists under the relevant legislation, possibly for good policy reasons. Accordingly, for the reasons set out above, the Tribunal was not satisfied on balance to dispense with the consultation requirements imposed by Schedule 2 and does not grant the second application.

Dated the 11th day of August 2006

CHAIRMAN.....

Mr I Mohabir LLB (Hons)