

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00ML/LDC/2008/0022

BETWEEN:

BRIGHTON & HOVE CITY COUNCIL

Applicant

- and -

LESSEES OF

**Flat 114 Dudenev Lodge
88-174 Upper Hollingdean Road, Brighton**

Respondents

**and others as set out
in the schedule on file**

HEARING DATE: 3rd September 2008

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr J N Cleverton FRICS

1. **The Application**

1.1 Under cover of a letter dated 4th April 2008 from the Applicant's solicitors, the Applicant applied to the Tribunal for a determination under Section 20ZA of the Landlord and Tenant Act 1985 dispensing with the full consultation requirements set out in Schedule 2 of The Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of long term contracts.

1.2 The part of the consultation requirements that the Applicant sought to dispense with was the 30 day period given for observations on the landlord's proposals to enter into the long term contract.

2. **The Law**

2.1 By Section 20ZA (1) the Tribunal may make such a determination if satisfied that it is reasonable to dispense with the requirements.

3. Background to Application

3.1 The Applicant's contract for the supply of gas to its own buildings and to certain blocks of residential flats was due to expire at the end of September 2008. This had been a contract under which the price of gas purchased by the Applicant had been fixed for three years. During that period the price of gas has risen considerably and consultants hired by the Applicant advised that prices were likely to continue to rise and that it would be in the Council's interests to enter into a new fixed price contract. The Council therefore put the contract out to tender.

3.2 The Respondents are the long lessees who have acquired their flats either directly or indirectly from the Council under the right to buy legislation and whose gas is supplied to communal boilers. They are liable to contribute towards the cost of heating their flats and communal parts through the service charge provisions of their leases. They are entitled to be consulted and to have any representation they make taken into account before such a contract is entered into under the aforesaid consultation provisions.

4. The evidence


4.1 Written evidence of The Applicant's case was provided to the Tribunal by Mr Jason Clarke, the Applicant's Energy & Water Manager and in the form of a briefing document prepared by Team Q, the Applicant's energy consultants. Mr David Arthur and Ms Caroline Price also attended the hearing to answer any questions the Tribunal had and the Applicant's case was presented to the tribunal on 3rd September 2008 by Mr Matthew Hutchings of Counsel.

- 4.2 On 7th April 2008 the Applicant served on all the Respondents notice of its intention to enter into a long term contract for the supply of gas. No observations had been received by the Applicant in response to the notice.
- 4.3 On 6th May 2008 public notice was given in the OJ and out of 11 tenders invited 4 were received from gas suppliers. The quoted prices, however, only held good for 48 hours in the turbulent conditions for energy prices currently being experienced and The Applicant was unable to enter into a contract quickly enough. On 14th August 2008 the Applicant sought further quotes for the supply of gas when it was thought, on advice, that the fall in gas prices which had occurred since May had probably "bottomed out". The tenders were analysed by the consultants and they advised the Applicant to place the contract with E-on Energy who by this time had given the most competitive quote in addition to the fact that they also supply the Applicant with electricity and were therefore familiar with the Applicant and its systems.
- 4.4 On 16th August 2008 the Applicant advised E-on Energy that it intended to place the contract with them. Under EC law, however, a period of 14 days must then elapse to enable their potential contractors to challenge the placing of the contract (which said period is referred to hereafter as "the Alcatel period").
- 4.5 On 19th August 2008 a notice was given to all the affected lessees of the Landlord's proposal which contained the details of the price that had been accepted and this notice gave the lessees 10 days in which to make their observations. Only 10 days was given instead of the 30 days provided by paragraph 4 of Schedule 2 to the 2003 Consultation Regulations because that was all that could be given before the Alcatel period came to an end and the contract would come into effect. No observations have been received.
- 4.6 The earliest date that the Applicant could secure for the hearing of the application at the Tribunal was 3rd September 2008. As the Applicant was required to sign the contract on 1st September 2008 the Applicant asked the Tribunal to give its approval, retrospectively, to the dispensing with the full requirements of the Consultation Requirements.

5. The Determination

- 5.1 The Tribunal was satisfied that the Applicant was acting in the best interest of the Respondents in seeking to fix the price it would have to pay and collect from the Respondents for gas over the coming two years. Although the contract entered into will result in the Respondents having to pay significantly more for their gas for the next two years than during the previous three years the Respondents would be likely to have to pay substantially more than this if they were not able to take advantage of the Applicants bargaining power. Furthermore, unlike the situation in December 2006 when the Applicant had completely failed to appreciate that it had an obligation to comply with the consultation regulations or apply to the Tribunal to dispense with these requirements, on this occasion the Tribunal was pleased to see that the Applicant had done what it could to comply in the difficult circumstances which have resulted from the volatile prices of energy.
- 5.2 The consultation requirements had been complied with save that the Applicant could give only 10 days instead of 30 for observations to be made prior to signing the contract in fact no observations had been received by 3rd September 2008.
- 5.3 In all the circumstances the Tribunal found that it was reasonable to dispense with the full requirements of the Service Charge (Consultation Requirements) (England) Regulations and duly does so in respect of the contract for the supply of gas by E-on Energy from 1st September 2008 for a period of 2 years.

Dated this 25th day of September 2008


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D. Agnew LLB, LLM (Chairman)