

IN THE LEASEHOLD VALUATION TRIBUNAL

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

Application No	CHI/00ML/LDC/2009/0028
Property	Various properties in the area of Brighton & Hove listed in the attached Schedule.
Applicant	Brighton & Hove City Council
Respondents	The Lessees of the properties, as listed in the attached Schedule.
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Miss C D Barton BSc MRICS Ms T Wong
Date of hearing	18 November 2009
Date of decision	18 November 2009

1. THE APPLICATION

The Applicant Landlord asked the Tribunal to dispense with part of the consultation requirements imposed by statute in relation to long-term agreements for the bulk supply of electricity to a large number of sites including the buildings containing the Respondents' properties.

2. THE DECISION

The Tribunal dispensed with the statutory consultation requirements in relation to the period of time for written observations to be made on the Landlord's proposal in relation to the contract for the supply of electricity by Scottish & Southern Energy for a period of 36 months from 1 April 2010.

3. The Tribunal announced its decision orally at the hearing of this Application on 18 November 2009.

4. THE EFFECT OF THE DECISION

The law generally requires that the Landlord must allow leasehold tenants a period of 30 days to make written observations on the proposals which the Landlord has made regarding its intended

choice of contractor and unit prices. If it does not do so, the amount which the Landlord can claim from any leaseholder would be limited to £100 for the supply of electricity under that contract. This decision has the effect that the Landlord does not need to allow the leasehold tenants the full period of 30 days and the limit of £100 is therefore lifted.

5. In making its decision to dispense with consultation in this case, the Tribunal is not making a determination as to the liability of individual leasehold tenants to pay for the electricity charges. Nor is the Tribunal making any determination as to the reasonableness of the charges or costs that will be or may be incurred. Such a determination could only properly be made on an application under s27A of the Landlord & Tenant Act 1985.

6. THE LEASES

The Tribunal was shown examples of 2 leases in use at the Properties. Each of them provided for the tenant to contribute to the cost of lighting the common parts of the building under the service charge provisions. Nothing in the Application turned on any provision of the leases.

7. THE LAW

Section 20 Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) states:

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.

8. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 Schedule 2.
9. Section 20ZA(1) Landlord & Tenant Act 1985 states: *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.*

10. **THE EVIDENCE AT HEARING**

A hearing was held at Brighton. The Applicant was represented by Mr D Arthur, Right-to-Buy Officer, Mr S Plotkin, Leasehold Liaison Officer, and Mr I Sharpe, Building Services Manager. Written evidence and supporting documents were provided to the Tribunal. No Respondents attended the hearing and no submissions were received by the Tribunal from any Respondent. The Tribunal did not find it necessary to inspect any of the properties.

11. **REASONS AND DETERMINATION**

The Applicant's unchallenged case was that on 31 March 2010 an existing long-term qualifying agreement for the supply of electricity to smaller sites within its portfolio (the "sub 100kw contract") would expire. This was a corporate contract for around 1,330 sites including housing, libraries, sports pavilions, schools and offices.

12. The Applicant as a local authority uses the services of energy consultants, Team Q, whose responsibility includes advising the Applicant about predicted movements in energy prices. They advised the Applicant that electricity prices were predicted to rise and that it would be desirable to negotiate a contract price as soon as possible.

13. The Applicant accordingly sent out a written Notice of Intention to the relevant leaseholder tenants dated 27 August 2009 and giving 30 days for written observations as required by the consultation procedures. No written observations were received.

14. Tenders were invited from electricity companies, and three were received from companies which were prepared to supply electricity in accordance with the Applicant's requirement that it be sourced from renewable generation. The Applicant also asked that the tender price should incorporate the introduction of automatic meter reading. All the tender returns showed price decreases from the current contract prices.

15. Based on advice from its energy consultants the Applicant decided which supplier it preferred. By a further letter dated 13 November 2009 the Applicant notified the leaseholder tenants of its proposals to place the contract for a period of 36 months with its preferred supplier Scottish & Southern Energy, and it gave details of the unit price.

16. The statutory consultation procedures would have required that leaseholder tenants be given 30 days from that letter in which to make written observations on those proposals. However, the

Applicant was also bound to follow European law which includes a 14 day period known as an 'Alcatel' period. During the Alcatel period, the supplier would hold its prices steady. After the expiry of the 14 days, the electricity prices would be free to fluctuate. The advice which the Applicant had received from its energy consultants was that electricity prices are currently extremely volatile and there was a significant risk that the contract price would not be available after the 14 days. The Alcatel period was due to expire on 21 November 2009. This was about 8 days after the notice to leaseholders. The Applicant therefore asked the Tribunal to dispense with the requirement to allow for 30 days consultation, so that it could enter into the contract as soon as the Alcatel period expired.

17. The Tribunal noted that s20ZA empowered a tribunal to dispense with all or any of the consultation requirements if satisfied that it was reasonable to do so. The question of whether it was reasonable was to be judged in the light of the purpose of the consultation provisions. The most important consideration was likely to be the degree of prejudice that there would be to the tenants if the consultation was not carried out as required by statute. This would not, however, be the sole consideration.
18. The Tribunal considered all the circumstances of the case, and decided that on balance it was reasonable to dispense with the requirement for the Applicant to consult the tenants before entering into a contract for the qualifying long-term agreements, because:
 - i) The evidence demonstrated that the price of electricity was volatile, that it fluctuated, and that there was a significant risk that it would rise during the consultation period.
 - ii) The Tribunal was satisfied that the Applicant was acting in the best interests of the leaseholder tenants in securing the best price available based on the expert advice of the energy consultants.
 - iii) The Applicant had recognised its obligation to comply with the consultation requirements, and had done so in respect of its first Notice of Intention.
 - iv) The Applicant had sent the leasehold tenants its Notice of Proposals, and there had been at least an abbreviated opportunity for tenants to respond. No responses had been received by the date of the hearing.
19. The Tribunal noted that the Notice of Intention and the Notice of Proposals did not specify that the contract price was to include

the introduction of automated meter reading. The evidence showed that the new contract price reflected a substantial reduction from the existing contract. However, it was possible that the automated meter reading had had some bearing on the tender responses, and so the Tribunal took the view that the leaseholder tenants ought to have been notified of this. On balance, this did not affect the Tribunals' decision to waive the consultation requirements in respect of the agreements for the supply of electricity.

Signed-----*hmc*-----

Dated-----*18-11-09*-----

SCHEDULE
of Lessees who are the Respondents to this Application

<u>Block</u>	<u>Flat No.</u>	<u>Names</u>
Dudeny Lodge, Upper Hollingdean Road, Brighton BN1 7GT	114	Mrs S.K.Leeves
	131	Mr J. Mackin
Essex Place, Montague Street, Brighton BN2 1LB	3	Mr B.Osei & Ms F Tettah
	7	Mr J. Goodwin
	11	PR Mrs E. Green Dcd
	15	Ms H. Mears & D. Sargeant
	17	C. Douthwaite
	18	Dr N. Douthwaite & Mrs P.Douthwaite
	19	Ms I. Zisu & Mr P. Zisu
	35	Mrs J. Wells
	38	Mrs F.Hollis & Mr M. Hollis
	43	Ms J.D'Avilar
	49	Mr I.Adler & Mrs J. Bowman
	51	Mr P. Chapman & MsJ.Hughes
	57	Ms A. Aggarwal
	74	Mr F.Flynn
	80	Mr D.Wood & Mrs R. Wood
	88	Mr J. Gordon
	89	Mr W. Carty
	91	Ms L. Grimsley & MrD.Mcque
	92	Mr S. Grasso
	95	PRs Mr W. Douthwaite
98	Ms K. Fisk	
99	Mr M. Woolford	
103	Mr G.Kettlewell	
106	Mr D. Wood & Mrs R. Wood	
112	Ms N. Stuart	
119	Ms L.Martinovic-Vavra & Mr J. Thwaites	
126	MsH.Rigden & Mr P. Smith	
127	Mr G.Clark & MsL.Clark	
Falcon Court, Swanborough Place, Brighton BN2 5QB	114	Mr G.McCarthy
	148	Mr K.L. Blake
	159	Mrs R. Hooda
Heron Court, Swanborough Place, Brighton BN2 5QA	72	Mrs F.L. Wayne
Kestrel Court, Swanborough Place, Brighton BN2 5PZ	13	Mr N. Hussain
	27	Mr & Mrs J. Gunn
	34	Mrs G. Dormer

Kingfisher Court,	68	Mr & Mrs D. Goldsmith
Albourne Close,	78	Mrs S.J. Whitehead
Brighton BN2 5FX	84	Mr E. Michaelides
	87	Mrs V. Sommerford
	91	Mr N.A. Bishop
Nettleton Court,	9	Ms B. Mantell
Upper Hollingdean Road,	19	Ms R.E.M. Lock
Brighton BN1 7GS	31	Mr H.G. Mainwaring
	70	Mr B.P. Johnson
	72	Mrs F.D. Bradley
	76	Mr N.P. Marsh
	83	Forestdale Properties Ltd
Normanhurst,	2	Mr K. Miah
Grove Hill,	11	Mr M. Rahman
Brighton, BN2 9NJ	12	Mr M. Rahman
	16	Mr D. Wood & Mrs R. Wood
	24	Mr D. Wood & Mrs R. Wood
	30	Mr Cattermore & Mr A. Kampen
	36	Mr R. Webber
	39	Mrs L. Cook & Mr R. Cook
	40	Mr D. Nash
	42	Mrs A. Chipper & Mr T. Chipper
	43	Ms E. Verschuren
	44	Mr F. Algassar
St. James House,	10	Ms A.M. Briars
High Street,	16	Ms S. Smith
Brighton BN2 1RN	18	Ms W.L. Demain
	24	Alliance & Mutual Investment
	25	Mr W.F. Allum
	28	Mrs J. Nelson-Smith
	35	Mr G.H. Cordon
	43	Mr G. Giubertoni
	45	Mr & Mrs A.J. Dykins
	47	Ms N. Nazari
	53	Ms E.A. Verchuren
	57	Miss A. Rose
	68	Mr D. Golding
	69	Ms C. Mackenzie
	70	Mr & Mrs C. Bosker
	71	Mr & Mrs R. Rajkotia
	74	Mr & Mrs R. Ross
	79	Mr M.P. Kelly
	82	Mr W.J. Barratt & Ms S. Pinnell
	87	Mr T. Touvay
	88	Forestdale Properties Ltd
	89	Mr D. Easen
	100	Mrs E.F. Mitchell
St. James House (Continued)	110	Forestdale Properties Ltd
	112	Mr & Mrs J.S. Brand
	113	Mr. F. Mercer
	118	Mr & Mrs J.F. De Lacy
Swallow Court,	6	Mr. B. Bollingbroke
Albourne Close,	31	Mr M. Arthur
Brighton BN2 5FW	37	Mr P.W. Hayler

Theobald House,
Blackman Street,
Brighton, BN1 4FE

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Mr I. Hills
Mr C. Webb
Mr R. Sandercock
Mr N.Parker
Ms S. Jones
Mr.J.Romandios
Mr R. Clarke
Mr D. Clews
Massey Group plc
Ms J.Snazell
Miss M.Green&Mrs S.Green
Mr D.Haste & MrsS.Haste
Mr R. Kirkup
Mr S.Hince
Mr A. Longdon
Ms T. Porter
Mr D. Monson

Wiltshire House,
Lavender Street,
Brighton BN2 1LE

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Mr.A.Perez
Mrs B. White
Mr B. Fane
Mrs B. Strutt & Mr J. Strutt
Mrs B. Eaton & Mr J.Eaton
Mr A. Scroggins
Mr P. Molyneux
Mrs S. Gavan
Mr J. Pope
Mr B. Owen
Ms S. Singleton
Mr R.Law
Ms C. Bowman-Shaw
Ms S. Bastin
Mr G. Powell
Mrs E. Dugard
MsLCrossweiler&MrL.Harris
PRs Mr R.Feldman