

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of sections 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) (“the Act”)

Case Number: CHI/24UC/LDC/2008/0023

Re: Various properties in Hampshire and in Buckinghamshire
(“the properties”)

Between:

Swaythling Housing Society Limited, Drum Housing Association and Windsor and District Housing Association

Applicants

and

The tenants of the properties

Respondents

Decision

Consideration: 17th April and 11th June 2009

Decision issued: 18th June 2009

Tribunal:

Mr R P Long LLB (Chairman)
Mr D M Nesbit JP FRICS FCI Arb

Decision

1. The Tribunal determines for the reasons set out below that it is reasonable to dispense with the statutory consultation requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) (“the Act”) in respect of the proposed arrangements for the supply of gas and electricity the subject of this application.

Application

2. The Tribunal received an application pursuant to section 20ZA of the Act dated 24th July 2008 made by Messrs Coffin Mew on behalf of Swaythling Housing Society Limited, Windsor & District Housing Association (trading as Windsor Housing) and Drum Housing Association to dispense with the requirements of section 20 of the Act in relation to the supply of gas and electricity to various properties managed by them where heating and/or lighting is provided to the communal areas for whose cost the residents contribute by way of service charge. The application was accompanied by a list of the properties affected by it and of sample copies of the leases or tenancy agreements, as the case may be, relating to those properties, and a list of the residents affected was supplied. It relates in all to 427 units of accommodation.
3. The Tribunal issued directions in the matter on 19th January 2009 and gave notice pursuant to regulation 13 of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003 (SI 2098/2003) of its intention to deal with the matter without an oral hearing as part of those directions. When the matter first came before the Tribunal on 17th April 2009 it observed that there was a potential conflict between the terms of the directions in this respect and those of the letter that accompanied them. It therefore required that further notice of its intention to deal with the matter on 11th June 2009 without an oral hearing should be given and served upon the various tenants concerned. This was done, and it appears to the Tribunal that it was done in sufficient time to enable the tenants concerned at least the statutory minimum period of notice.
4. The great majority of the properties are in Hampshire and thus are within the area ordinarily served by Southern Panel of RPTS, but ten are in Buckinghamshire, which is within the area ordinarily served by the Eastern Panel. The Tribunal points out that although Southern Panel has dealt with the whole application for administrative convenience, its members are appointed nationally and so are able lawfully to determine matters arising anywhere in England.

The evidence

5. There was a statement on behalf of the Applicants from their solicitors before the Tribunal. This stated that initial consultation letters were sent to residents who pay a service charge for supply of gas and/or electricity to communal areas on 25th April 2008 and on 21st May 2008. The Applicants are members of a group (Radian Group) that is obliged to comply with EU regulations in

respect of procurement. One aspect of those regulations is the “Alcatel Period” to be applied between the decision to award the contract and the signing of the contract itself with the successful supplier. This presented a problem that the energy market requires that bids are requested and contracts are signed within a twenty-four hour period, and the only way to reconcile these constraints is to use the services of a third party intermediary (“TPI”).

6. A TPI had been appointed, and would advise (inter alia) on the period for which the bids received should be accepted. Because of the nature of the market the Applicants were unable to offer tenants the option of two contractors, nor to consult upon the price being offered, because the offer would not remain open when the period required by section 20 of the Act closed. The purpose of entering into a contract for the supply of gas and electricity to properties where heating and/or lighting is provided to the communal areas for whose cost the residents contribute by way of service charge was to benefit the tenants who would thereby be able to take advantage of the Radian Group’s purchasing power and economies of scale in this respect. A dispensation would enable the Applicants to contract with the successful bidder for the supply of gas and electricity to the areas mentioned within the very short times that that industry required.
7. Swaythling Housing Society had consulted 179 tenants at scheme addresses in Fordingbridge, Southampton and Eastleigh. Phone calls had been received to ask for information but no objections had been received to the proposals. Windsor Housing had consulted all its qualifying tenants. The only call had resulted from a misunderstanding of the purpose of the consultation. Drum Housing Association had consulted a total of 763 tenants of various sorts. The queries received had sought assurance that the arrangement would not affect their own supplier for the respective individual properties, and that assurance had been given.
8. The Applicants had served notice of the application together with a copy of the application and all supporting documents upon all of the tenants who were respondents to the application pursuant to paragraph 4 of the Tribunal’s directions mentioned above. No opposition had been received, and such few voting forms as were returned had been forwarded to the Tribunal.
9. Two responses resulted from the Tribunal’s further requirements mentioned in paragraph 3 above. One appeared to have been sent under the misapprehension that the application related to the supply of gas and electricity to the tenant’s own property and the other indicated that those tenants had not, for whatever reason, seen the earlier papers that the Applicants have assured the Tribunal were sent to all tenants in accordance with paragraph 4 of the directions.

The Law

10. Where a landlord intends either to carry out major works or to enter into a long term agreement for the supply of goods or services whose cost in either case will be borne by the service charge payers, section 20 of the Act requires that the landlord shall first either go through a prescribed consultation process

with the tenants concerned or alternatively obtain a decision from the Tribunal that it may dispense with those procedures. If it fails to do so the amount that it may recover from each service charge payer towards the cost of the item in question is limited. In the case of long-term agreements the recoverable amount is limited to £100 per annum. The detailed consultation requirements are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2088/2003) (“the regulations”) and require a notice of intention to enter into the agreement, facilities for the inspection of documents, a duty to have regard to tenants’ observations at that stage followed by preparation of a detailed statement of the landlord’s proposal and a further opportunity for the tenants to comment.

11. Section 20ZA of the Act allows the Tribunal to dispense with some or all of these requirements if it is satisfied that it is reasonable to do so.

Facts found

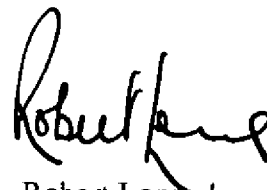
12. The Tribunal found as a fact that the Applicants intend to enter into a long term agreement for the supply of gas and/or electricity to those of their properties where heating and/or lighting are supplied to communal facilities and the cost of so doing is recovered from the tenants of those properties as a part of their service charge. Initial consultation letters were sent to residents in the properties concerned on 25th April 2008 and on 21st May 2008. The tender process will have to be advertised in accordance with EU requirements, so that nomination from tenants of suppliers is not practical.
13. It further found that the tendering process in the energy industry for contracts of this nature provides only a very limited time to decide upon and to accept a suitable tender. Prices quoted by the various utility companies will be valid possibly only for a matter of hours, or for a very few days at best, and would not remain valid at the end of any consultation period because the whole consultation process would take not less than some ninety days to complete.

Consideration

14. The Tribunal is satisfied that such a tendering process will have the effect of ensuring that the gas and electricity purchased for the purposes described is purchased upon the best terms available at that time, and with the benefit of the economies of scale and purchasing power that a large organisation like Radian Group, whose members it is told manage some 15000 units, can command. It is equally satisfied that it is impossible for the Applicants to reconcile the EU requirements that they must follow with those of the regulations.
15. Finally, it is apparent that it is in the best interests of the tenants of the properties concerned that the gas and/or electricity for the communal areas on the properties affected should be purchased by the procedure proposed by the Applicants because by that means the Applicants should be able to ensure that the gas and electricity are acquired upon the best available terms. That will minimise the service charge payable by the tenants concerned in respect of

that element of their services over a substantial period in a market that has of late been very volatile, and in the Tribunal's judgement is thus generally in their best interest, given that in the purchase of gas and electricity quality issues are of little relevance. The Tribunal therefore finds that it is reasonable to grant the dispensation sought, for it is in the interest of all the parties to contain the costs in question, and that object can be achieved in these circumstances in no other way.

16. Therefore the Tribunal grants the application for a dispensation from the requirement to comply with the statutory consultation requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act") in respect of the proposed arrangements for the supply of gas and electricity to properties the subject of this application where heating and/or lighting is provided to the communal areas (not, for the avoidance of doubt, to individual flats or houses) for whose cost the residents contribute by way of service charge. The dispensation so granted does not in any way imply any approval by the Tribunal of the terms that may be arranged for such supply, or prevent any subsequent application being made under section 27A of the Act in respect of the reasonableness of the cost or standard of service arising from those arrangements.

A handwritten signature in black ink, appearing to read 'Robert Long', with a stylized flourish at the end.

Robert Long
Chairman
16th June 2009