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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985, SECTION 20ZA

Case Reference:	LON/00BE/LDC/2012/0081
Premises:	**Various Blocks owned by the Applicant in the North East of Southwark** - specifically the Abbeyfield, Pedworth, Four Squares (including Rouell Road and Keetons), Silverlock and Tissington Estates
Applicants:	London Borough of Southwark
Representative:	Legal Services Department, London Borough of Southwark
Respondent(s):	The Leaseholders in the North East Area of the London Borough of Southwark as identified in the Schedule attached to the Application
Representative:	None
Date of Application	12th July 2012
Date of Directions	17th July 2012
Date of Hearing:	10th September 2012
Date of Decision	13th September 2012
Appearance for Applicant(s):	Simon Butler (of Counsel), Mr Orlando Strauss (Home Ownership Lawyer), Felix Rechtman (Senior Lawyer Litigation), Carla Blair (Capital Works Manager), David Gee (Project Manager and Consultant to the Applicant), Robert Stubbs (Accountant and Director of Grant Thornton), Alex Vaughan (Project Accountant), Bruce Geldard (Chartered Engineer and Consultant to the Applicant), Ian Smith (Head of Sustainable Services) and Gulam Dudhia (Service Charge Accountant)
Appearance for Respondents:	None
Leasehold Valuation Tribunal:	Mr S. Shaw LLB (Hons) MCI Arb Mr R Shaw FRICS

DECISION

Introduction

1. This case involves an application for a dispensation order in respect of the consultation provisions contained within Section 20 of the Landlord and Tenant Act 1985 ("the Act") pursuant to the provisions of section 20ZA of that Act. The application is made by the London Borough of Southwark ("the Applicant"). The Respondents to the application are the various leasehold owners of properties in the North East section of the Applicant's housing area, and specifically the Abbeyfield, Pedworth, Four Squares (including Rouell Road and Keetons), Silverlock and Tissington Estates.

2. The application was made on 12th July 2012 and directions were given on 17th July 2012. In those directions, it was provided that the application should be supported by a Statement of Case explaining the reasons why the consultation procedure could not be complied with and that this statement should be supplied to the Respondents. In turn the Respondents were given the opportunity of challenging the application and/or calling for an oral hearing. In the event, there have been only two responses from the 760 owners of properties in the relevant area of the Applicant. Both of these responses are entirely supportive of the Applicant's application.

3. A hearing of the application took place on 11th September 2012. The Applicant was represented by Mr Simon Butler of Counsel, and he was accompanied by

the various other personnel referred to in the title of this Decision. There were no appearances by or on behalf of any of the Respondents to the application.

4. At the hearing, Mr Butler explained the nature of the application and the reasons for the application being made. The position is well set out in the Applicant's Statement of Case, which appears at page 17 of the hearing bundle. In short, the Applicant is hoping to provide low carbon heat through a decentralised energy district heating network from the South East London Combined Heat and Power (SELCHP). This energy is produced from this waste plant, which is situate in the Borough. The project will not however proceed unless the Tribunal makes a dispensation order in the terms sought by the Applicant.

5. The background is explained very fully in the Applicant's Statement of Case appearing at page 17 in the bundle and continuing to page 27. That statement is itself supplemented by various appendices which are at pages 28 to 45. No point is served by repeating all of that material in the context of this Decision, but suffice it to say that, very briefly, the Applicant is hoping to supply power for the purposes of providing heating in the various estates through a low carbon production of energy from a waste plant called South East London Combined Heat and Power (SELCHP). If the matter proceeds as the Applicant hopes it will, the result will be that heating will be supplied in the various properties and to the various leaseholders referred to, at a significant saving compared to the charges made by the conventional energy suppliers.

6. The proposal is that the Applicant will enter into a 20 year agreement with a company called Veolia Environmental Services Southwark (VESS) and this company will ensure, by an arrangement also with SELCHP that piping is laid and provision is made for the generation of heat in the properties which are the subject matter of this application.

7. The agreement which has been negotiated and which is subject to the Tribunal making the order requested, also provides for the maintenance of the existing boilers in the various properties so that these boilers can be used during the course of planned maintenance of the system (during which time it would be decommissioned) or if for any reason the system fails, and in addition so that there is the option of reverting to the conventional boilers at the end of the term of the agreement, if for any reason it transpires that a continuation of this system is inadvisable.

8. The Tribunal heard evidence from Mr David Gee who is in effect acting as a consultant to the Applicant and who has his own company, which has experience of negotiating these types of agreement with large multi-national suppliers. He confirmed to the Tribunal that there is in fact only one usable source of low carbon energy which could be used to serve this area and that is the SELCHP plant referred to above. There is apparently another plant in North London but the cost of providing the pipe work to convey the heat amounts to £1 million per kilometre and therefore a local plant is really the only feasible option. Mr Gee gave some evidence about why it was necessary to make this application, and he told the Tribunal that the Section 20 procedure effectively

does not deal with a scenario of the kind which exists in this case. This is because the SELCHP centre is the only relevant source from which the power can be obtained (as explained above) and therefore there is no scope for going out to tender from alternative contractors in the ordinary way. Also by virtue of a Section 106 Agreement, VESS as referred to above is compelled to try to deliver this service if it is possible – as indeed it is in this case.

9. He told the Tribunal that a price comparison had been made with alternative ways of providing heat for the various Respondents. The deal which has been struck, subject to this Tribunal's order, so he told the Tribunal, is very attractive from the point of view of the Respondents and over the 20 year period of its fixed term, gas prices would have to drop by 30% in order for the Respondents not to be making a saving. A table was provided for the use of the Tribunal which demonstrated that the unit cost for the consumer would at year 20 be £111.62p as opposed to £77.90p under the proposed new contract. This amounts to a saving for consumers of £33.72p per unit at the end of the period and £17.73p during the first year of the contract.

10. The Tribunal also heard evidence from Mr Robert Stubbs, Mr Peter Smith and Mr Bruce Geldard, as well as Ms Carla Blair and Mr David Gee. No disrespect is intended in respect of the evidence produced by these witnesses if it is not set out in any detail in this Decision. The gist of the evidence was helpfully summarised by Mr Smith who is head of the Sustainable Services Department of the Applicant Council. Dealing specifically with why this application was being made, he told the Tribunal that initially it was thought that there was some

urgency because Government subsidy in the form of Renewable Obligations Certificate (ROCs) were being made conditional by the Government upon the starting of the supply of heat by April 2013. This prompted the urgent application, although it so happens that the Government has relaxed this requirement very recently. Of course this was unknown to the Applicant at the time of the application, and the position may again change if other considerations affect Government funding. In addition there was some urgency because, for every year that there is delay, the cost of the capital outlay will also go up and therefore have a knock-on effect on the unit cost.

11. He also made the point that, as already indicated above, this is not a conventional situation in which there is a prospect of obtaining competitive quotes from alternative suppliers. There is in effect only one relevant supplier, and the cost is a fixed cost which is negotiable to some extent but not by reference to alternative more competitive quotations. Accordingly, the process of going through the section 20 consultation, with a view to allowing Respondents to put forward alternative contractors would have been an entirely artificial process because no such contractors exist. Moreover, if the tendering process had been provided on a wider basis (presumably to suppliers who are outside the local jurisdiction of the Applicant) not only would their quotations of necessity have been significantly higher but the European Community procurement process would have been invoked, which would have elongated the matter yet further and prejudiced the more attractive terms which the Applicant has at this stage been able to negotiate.

12. There are, apart from the asserted cost benefits from the point of view of the Respondents, other benefits in the agreement which has been negotiated. First of all the unit price is linked not only to the RPI but to prices being provided by alternative gas or other energy suppliers. The formula devised ensures that the unit cost is kept below what it might otherwise be from other sources of energy. In addition the proposed agreement provides that the existing boilers will be maintained and kept in good condition so as to act as some form of safety net in the event that planned maintenance or other eventualities preclude the continuity of the proposed system.

Conclusion and Determination

13. The Tribunal is satisfied that this is an appropriate case in which to dispense with the consultation requirements of section 20, and that for the purposes of section 20ZA it is reasonable to grant a dispensation order. The Tribunal is satisfied that the procedure does not aptly deal with the situation which arises in this case, because competitive quotations are not feasible and there is in fact only one possible provider of this form of low carbon energy. The figures which have been produced to the Tribunal suggest that the agreement which is available is in the interests of the leaseholders of the Applicant, and that the agreement could be prejudiced by the delay generated by section 20 consultation. Moreover for the same reasons, any such consultation would have been on the face of it artificial. A further factor which the Tribunal takes into account in exercising its discretion in favour of the Applicant, is that there has in fact been extensive consultation with the Respondent leaseholders. Ms Blair, the Capital Works Manager of the Application wrote a very full letter which

was sent to all of the affected leaseholders dated 26th July 2012 and appearing at pages 32 to 35 of the bundle. In addition there was a specific open meeting with the affected leaseholders which took place on the 8th May 2012, and which the Tribunal was told all such leaseholders were invited to attend and ask any questions which might arise. Mr Gee told the Tribunal that he had been present at that meeting and indeed many other meetings of a more selective kind with various residents associations or other associations representing the leaseholders. On all of these occasions the response had been generally positive, and the only reservation had been to the effect that some more information on the cost should be supplied, which information apparently has now been supplied. As already indicated, not a single leaseholder of the 760 who have been notified of this application has opposed the application, and those responses which have been received have been entirely positive.

14. For the reasons indicated the Tribunal therefore grants the dispensation order dispensing with the requirement to follow the section 20 consultation procedure in the context of this case. It should be stressed that the order made in the context of this application would not preclude any leaseholder from bringing an application under section 27A of the Act for determination of the reasonableness of service charges. This decision is in respect of the dispensation of the consultation requirements only and is restricted in this regard.

Legal Chairman: S. Shaw

Dated: 13th September 2012