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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AZ/LDC/2013/0100**

Property : **All leasehold properties in the
London Borough of Lewisham**

Applicant : **London Borough of Lewisham**

Representative : **None notified**

Respondent : **Various Lessees of London
Borough of Lewisham**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the
consultation requirements**

Tribunal : **Judge Goulden
Mr L Jarero BSc FRICS**

**Date and venue of
Hearing** : **Thursday 5 December 2013 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **5 December 2013**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985 (“ the Act”). The application was dated 22 August 2013 and was received by the Tribunal on 3 October 2013.
2. Directions of the Tribunal were issued on 4 October 2013. Forms for completion by the lessees in respect of the S20ZA application were attached to the Tribunal’s Directions. The Applicant was given Directions in respect of notifying the lessees, by 23 October 2013, of the Directions and affording the lessees dates, times and locations where documentation could be inspected and copies taken, if wished.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.
4. No completed forms were received from or on behalf of any of the Respondents.

The hearing

5. The matter was determined by way of a paper hearing which took place on Thursday 5 December 2013.

The background

6. The application related to all relevant leasehold properties within the London Borough of Lewisham (“the properties”)
7. The Applicant seeks dispensation for a qualifying long term agreement (QLTA) for the supply of electricity to all relevant properties in the Borough. It is understood that the current QLTA expires on 31 December 2013 and covers 1,302 individual supplies (not leasehold properties), and that the tender process for the new contract should have been completed by 1 January 2014. The new contract length is set at 36 months, and the method of procurement will be by an electronic auction using an existing framework agreement.

8. It is understood that consultants have been appointed to conduct the electronic auction, and that this is the most appropriate method of procurement, but requires commitment on the part of the purchaser very quickly. The Applicant therefore contends that it is not possible to carry out full consultation under the Act, since there is insufficient time to do so.
9. No inspection was requested and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. A copy of a specimen lease was provided to the Tribunal. This lease required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. The Applicant also provided copies of the list of supplies, supplement to the Official Journal of the European Union, advertisement on the Applicant's website, letter to Leasehold Improvement Group date 18 October 2013 and copy of advertisement placed in The Mercury newspaper.

The issues

11. The issues are as set out in paragraph 7 above.

The Applicant's submissions

12. Written submissions were received from the Applicant.
13. The Applicant contended, inter alia, that the long term agreement was for the procurement of the supply of electricity to lessees. The proposed contract term was 3 years and the contract value was estimated to be £5m. There were 1,768 landlord supplies which were involved, each of which served multiple properties. There were approximately 14,600 properties (leasehold and tenant) which were charged for communal electricity.
14. The method of procurement decided on was a tender via electronic auction using an existing framework agreement previously set up by The Energy Consortium which was awarded on 20 May 2013. The Official Journal of the European Union Notice had been sent electronically.
15. It was stated "*bidding for the contract will take place by e-auction commencing at 10.00 am on 14 November 2013 and finish at 1.00pm on 14 November 2013. The contract will be let at 3.00pm on 14 November 2013. The method of procuring these tenders via an electronic auction takes place on a single day. Companies supplying electricity offer their best prices at an e-auction but are not willing to hold their bids for longer than a few hours on the day it takes place.*"

This process serves the leaseholders' interests by obtaining the lowest prices for electricity supply for leaseholders"

16. The Applicant requested dispensation from the consultation requirements *"as in order to obtain a competitive price, it is not possible to give the leaseholders the required 30 day consultation period after the bids are made and obtain the best price for the electricity supply. In a volatile market, a paper tendering exercise with a 30 day period would not have resulted in a fixed price. The full process of consultation envisaged by the Consultation Regulations would have lasted between three and six months. In the light of the above, no consultation on the letting of this contract has been carried out with the Applicant's leaseholders. On costs grounds, the utility consultants Utilyx have been appointed to conduct the e-auction "*.
17. The Applicant confirmed that the Tribunal's Directions had been placed on its website on 16 October 2013, together with information as to where lessees could inspect documentation and take copies. A copy was provided.
18. The Applicant also confirmed that the Leasehold Improvement Group had been informed, and the Community Involvement Officer who chaired the meetings had been sent all the relevant information and this was put in the Invitation Letters sent to the lessees. A copy was provided. In addition, further information was given to the Leasehold Improvement Group meeting which took place on 12 November 2013 where lessees were given the opportunity to ask questions regarding the application.
19. The Applicant had placed an advertisement in a local newspaper, The Mercury, which had been published on 23 October 2013, a copy of which was provided to the Tribunal.
20. No responses had been received by the Applicant from any of the lessees.
21. The Applicant stated *"the tendering process undertaken by the Council, whilst it does not accommodate section 20 requirements it serves leaseholders interests by obtaining the lowest prices. The price of electricity, and electronic billing/administration facilities are the only variables. The standard of electricity supplied remains constant no matter which company supplies it. Furthermore, the full cost of consultation under Schedule 2 of the Regulations and the increased price that would have been paid for the electricity as a result of the delay in awarding the contracts would have been met by leaseholders. In addition to this, majority of leaseholders pay less than £100 per annum for the supply of communal electricity"*.

The Respondent's submissions

22. No written representations were received from or on behalf of any of the Respondents.

The Tribunal's Determination

23. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

24. Dispensation is dealt with by S 20ZA of the Act which provides:-

“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”

19. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

- 1. (1) The landlord shall give notice in writing of his intention to enter into the agreement—**
 - (a) to each tenant; and**
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.**
- (2) The notice shall—**
 - (a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;**
 - (b) state the landlord's reasons for considering it necessary to enter into the agreement;**
 - (c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;**
 - (d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;**
 - (e) invite the making, in writing, of observations in relation to the relevant matters; and**
 - (f) specify—**
 - (i) the address to which such observations may be sent;**

- (ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
(a) the place and hours so specified must be reasonable; and
(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.
3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
22. No Respondent had challenged the consultation process. No written submissions have been received from or on behalf of any of the Respondents.
23. It appears that none of the Respondents would be able to arrange electricity supplies on such a competitive basis. This is clearly a highly technical procedure in a volatile market, which would require the specialist knowledge of utility consultants.
24. The Tribunal is satisfied that, in the particular circumstances of this case, the Respondents are not unduly prejudiced and it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.
25. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: J Goulden

Date: 5 December 2013