



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

Case Reference : LON/00AE/LDC/2014/0088

Property : All freehold and leasehold owners of all properties owned and managed by the London Borough of Brent (1) and Brent Housing Partnership (2)

Applicants : The London Borough of Brent (1)
Brent Housing Partnership (2)

Representative : Ms K. North

Respondent : Various leaseholders

Representative : Residents' Associations where applicable

Type of Application : For dispensation of the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985

Tribunal Members : Judge O'Sullivan
Mr J Barlow JP FRICS

Date of Decision : 11 August 2014

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for dispensation from some of the consultation requirements.
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant states that Notices of Intention were served on all affected parties on 21 August 2013 with a Notice of Proposal having been served on 21 March 2014. The tribunal is informed that the Notice of Proposal failed to inform the recipients that observations had been received from various lessees and freeholders and provide a response to those observations. The application for dispensation is made in relation to that omission.

The background

4. The application was dated 2 July 2014. Directions were made dated 9 July 2014 which provided for the Applicant to serve a copy of the directions on all Respondents and for them to then indicate whether they opposed the application. They further provided for any Respondent who wished to oppose the application to file and serve a bundle of documents upon which they relied.
5. The directions provided that this matter would be considered by way of a paper determination.
6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

The Applicants' case

7. The Applicants filed a bundle in accordance with the directions.
8. They confirmed by letter dated 30 July 2014 that a copy of the directions had been served on all relevant leaseholders and freeholders as directed.
9. The Applicants also relied on a statement of case dated 4 August 2014 and a witness statement of Dawn Martin, Head of Income Management of the same date.
10. The First Applicant is the freehold owner and lessor of 3573 residential properties concerned with this application and the freehold owner of 22 underleases with various underlessors for other properties. There are

also 132 freeholders who have service charge obligations contained within their deed of transfer.

11. The Second Applicant is an Arms Length Management Organisation (“ALMO”) and the managing agent of the First Applicant.
12. The Respondents are the leasehold owners of 3573 residential properties, 22 underlessors of other residential properties and 132 freeholders with service charge obligations contained within their deed of transfer. The residential leases are granted for a term of 125 years. Examples of the leases are included in the bundle.
13. It is common ground between the parties that under clause 4A(ii) and (iii) of the Lease the Respondent is liable to pay a reasonable part of the expenditure incurred by the First Applicant during the financial year in fulfilling its obligations and functions set out in clause 6 of the Lease. These include the repair of the Building, painting the outside and common parts and the provision of services.
14. Dispensation is sought under section 20ZA in respect of Schedule 2 paragraph 4 of the consultation requirements.
15. Council Works directive 71/305/EEC concerns the co-ordination of procedures for the award of large scale public contracts such as that which is the subject of this application. The First Applicant is a contracting authority and the QLTA falls within the categories of activities specified in the 2006 Regulations. Regulation 11 of the 2006 Regulations establishes the requirement to give notice of the works in the OJEU, the Official Journal of the European Union.
16. Following this procurement process under the OJEU a qualifying longterm agreement is being entered into with Wates Construction Limited for duration of 10 years. This concerns works and services in respect of planned works, cyclical maintenance, day to day responsive repairs and reactive maintenance. The planned works element of the contract is due to commence upon formal award of the contract estimated to be mid August 2014. The responsive element of the contract is scheduled to commence on 1 October 2014.
17. The Applicants say that the reason for entering into the contracts is because existing contracts had expired or were about to expire and new arrangements need to be set up.
18. Leaseholder consultation was undertaken pursuant to Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (the “2003 Regulations”). These provide that a Notice of Intention must be served and set out its contents. The tribunal was provided with a copy of the Notice of Intention served and the

Applicants note that the leaseholders were not invited to nominate a contractor as the value of the proposed agreement is above the specified financial threshold and it is a requirement to issue a public notice in the OJEU to advertise for such an agreement.

19. The tribunal is also informed that a detailed "Resident Engagement Plan" was developed with the Second Applicant to ensure high levels of resident engagement which involved a resident engagement day, phone surveys and workshops. Full details of these initiatives were set out in the witness statement of Dawn Martin.
20. The First Applicant says it received written observations from lessees at Chichele Road, Rathbone House and Barnett House in response to the Notice of Intention. Direct responses were sent in writing to four lessees. These observations commented on such matters as the duration of the agreement and whether it provided best value and service, the relationship between the proposed works and the responsibilities of Kilburn Square TMO and whether it had been consulted. Full details of the observations received and responses received were set out in Ms Martin's witness statement.
21. The 2003 Regulations also set out the requirements for the contents of the Notice of Proposal. The Applicants say that the Notice of Proposal served dated 21 March 2014 complied with all of those requirements save that it did not comply with paragraph 4(10) of Schedule 2 of the Service Charge Regulations. This was because the Second Applicant stated incorrectly in the Notice of Proposal that no observations had been received during the consultation period following the Notice of Intention. In response to the Notice of Proposal observations were received and detailed responses sent to the leaseholders.
22. The Second Applicant then realised that it had failed to include the summary of observations in the Notice of Proposal and subsequently wrote to all leaseholders providing the summary and responses and the tribunal was provided with a copy of that letter. It subsequently made this application for dispensation in relation to the omission of the summary of observations and responses.
23. The Applicants say that the Second Applicant had regard to the observations received and that detailed responses were sent to each respective leaseholder. Save for the failure to serve the summary the Applicants say that they have observed the requirements of the Service Charge Regulations. The Applicants say that no prejudice has been suffered by the affected service charge payers; in particular it says that regard was had to the observations made. The omission was rectified as soon as reasonably practicable and the leaseholders were fully apprised of the summary observations and responses.

The Respondents' position

24. The directions provided that any Respondent who opposed the application should complete a form attached to the directions. Forms and some correspondence were received from a very small percentage of the Respondents. The directions further provided at paragraph 8 that any Respondent who wished to oppose the application should compile their own bundle of documents. No Respondent has compiled their own bundle.
25. The tribunal did not therefore have any statements of case from any Respondents setting out why the application was opposed. The completed forms addressed various issues including the length of the contract, alleged poor service and alleged higher cost for works and fees if the contract were entered into. None of the forms or correspondence addressed the specific issue of the Applicants' failure to include the summary of observations and responses and its effect and comments related more to the intention to enter into the proposed contract itself.
26. It should be noted that several leaseholders had completed the form and indicated that they supported the application.

The Tribunal's decision

27. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with the consultation requirements contained in paragraph 4(10) of Schedule 2 of the Consultation Regulations.

Reasons for the Tribunal's decision

28. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
29. The tribunal notes that the Notice of Proposal did not contain the requisite summary of observations and responses. However it is noted that subsequently the Second Applicant sent a copy of the same to each Respondent and accepts the Applicants' evidence that regard was had to those observations.
30. It is noted that in all other respects the Applicants complied fully with the Consultation Requirements and in addition pursued a number of other voluntary initiatives to ensure the leaseholders and freeholders were kept fully informed.

31. Only a small percentage of the leaseholders responded to the application by completing a form and none served a statement of case or lodged a bundle in accordance with the directions. Many of those responded positively to the application. Of those who opposed the application the challenges made went more to the contract itself rather than to the issue before the tribunal, that is, whether it should grant dispensation in respect of the failure to include a summary of the observations and responses in the Notice of Proposal. None of the Respondents raised any issue of prejudice in relation to this failure. The tribunal is satisfied that the Respondents were not prejudiced in any way by the failure to include the requisite summary of observations and responses and considers that dispensation should be granted without terms. The tribunal is satisfied in the circumstances of this case that it is wholly reasonable to grant dispensation.
32. The tribunal hereby orders that the Applicants shall serve a copy of this decision on each leaseholder.

Application under s.20C

33. None of the Respondents made an application for an order under section 20C of the 1985 Act. However the tribunal notes that in any event the Applicants have confirmed that they do not intend to pass any legal costs through the service charge in connection with this application.

Name: S O'Sullivan

Date: 11 August 2014