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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00JA/LDC/2013/0023

Properties : Grove Court & Tower Court,
Peterborough PE2
60 Tyesdale, Bretton, Peterborough
PE3 9XZ and 55 Herlington, Orton
Malborne, Peterborough PE2 5PW

Applicant : Cross Keys Homes Ltd.

Respondents : all those long leaseholders named in
the application

Date of Application : 15th November 2013

Type of Application : Application to dispense with
consultation requirements in respect
of a qualifying long term agreement
(Section 20ZA Landlord and Tenant
Act 1985 as amended (“the 1985
Act”))

Tribunal : Bruce Edgington – lawyer chair
David Brown FRICS

DECISION

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1. The tribunal determines that it is reasonable to dispense with the statutory consultation requirements of s.20 of the 1985 Act in relation a new contract for the supply of gas to the properties for a period of 36 months from 1st April 2014 with Southern Electric Gas Ltd.

Reasons

Background

2. The tribunal received an application from the Applicant under Section 20ZA of the 1985 Act for dispensation from all of the consultation requirements contained in Section 20 of the 1985 Act in relation to a qualifying long term agreement for the supply of gas to the properties.
3. Notice of the application together with information from the First-tier Tribunal (Property Chamber) was given to the leaseholders of the properties affected by the proposed agreement by the Applicant. The relevant tenants' associations were also copied in. Any Leaseholder who might be affected by the application was invited to respond. None did.

Directions dated 26th November 2013 were issued. These were complied with by the Applicant who provided a statement of case.

4. The Tribunal informed the parties in directions that it considered that this matter was suitable for determination without a hearing, which determination would not be made before 13th January 2014. It was made clear that any party could ask for an oral hearing but none made any such request.
5. The bundle sent to the Tribunal for the purpose of this determination, it was noted that the name of the gas supply company in the evidence is SSE Energy Supply Ltd.; in the letter to the tenants, it is Scottish and Southern Electricity (SSE) and in the contract itself, it is said to be Southern Electric Gas Ltd.
6. Unfortunately, the conduct of this case by the Applicant has not been to the highest standard. The properties in the application form were described as 'various – as per attached list'. The list was of such small font that the addresses and Respondents could not be easily understood. The letter to the tenants dated 4th November 2013 informing them of the proposals contained the wrong company name and a full copy of the contract was not enclosed with the evidence.
7. Nevertheless, having satisfied itself that all the Respondents were notified of this application and were circulated with the directions order, and that no Respondent has suffered any prejudice, the Tribunal is prepared to deal with this application.

The Law

8. Section 20 of the 1985 Act limits the contributions of tenants to qualifying long term agreements entered into by landlords, unless the consultation requirements have been either complied with, or dispensed with, by this Tribunal. The detailed consultation requirements for qualifying long term agreements, are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations").
9. These require a notice of intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of a landlord's proposal. The landlord's proposal, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal and the landlord must give its response to those observations and there may be a duty to supply supplementary information.
10. 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable. A "qualifying long term agreement" is, subject to certain exceptions, an agreement entered into, by or on behalf of the landlord for a term of more than 12 months.

The Facts Found

11. The Applicant intended to procure a contract for the supply of gas to its leasehold properties by means of a competitive tender. The existing agreement was due to expire at the end of March 2014. Because of fluctuations in the prices for gas, suppliers will only hold quoted supply prices for a limited period which is less than the consultation period required by Section 20 of the 1985 Act.
12. The tendering process to be undertaken will only provide a very limited time to decide and accept which offer to take up. Prices quoted by the various utility companies will only be valid for a matter of hours or possibly days and will not be valid at the end of the required consultation period. In this case, the Applicant asked Utility Aid Ltd., an independent energy broker to obtain prices for renewal of the existing contracts.
13. Quotations from 6 potential suppliers were obtained on the 29th October 2013 which were kept open until 4.00 pm that day. The cheapest, i.e. that price quoted by Southern Electric Gas Ltd. was accepted.
14. The Applicant wrote to the Respondents and the residents' association on the 4th November 2013 advising that it had entered into the new contract as set out in the decision (above).

Reasons for the Decision

15. The Tribunal was persuaded by the Applicant's case that the proposed tendering process was the best way to procure the cheapest gas supplies for leaseholders, and that the best prices quoted by suppliers would not be held for more than a few hours. In fact 6 potential suppliers tendered. The cheapest of the quotations was accepted.
16. The cost of full consultation under schedule 2 of the Regulations and the increased price that would have to be paid for gas as a result of delay in awarding the contract would have to be met by leaseholders.
17. In making its decision to dispense with consultation on the application under s.20ZA of the 1985 Act, the Tribunal is not making a determination as to the liability of individual leaseholders to pay for the supply of gas in their service charges. That could only properly be made on an application under s.27A of the 1985 Act.
18. In the particular circumstances of this case the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements contained in s.20 of the 1985 Act and in schedule 2 of the Consultation Regulations.

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Druce Edgington
Regional Judge
30th January 2014