

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

Case Number: CH1/15UE/LDC/2006/0003

Decision on an Application under Section 20ZA Landlord and Tenant Act 1985

Applicant: Westcountry Housing Association (“Westcountry”)

Respondent: Tenants of the various Westcountry properties (as listed in the schedule to the Application)

Premises: Various Westcountry Properties (as listed in the schedule to the Application)

Date of Application: 13 January 2006

Tribunal Members: Mr A L Strowger MA (Cantab) (Chairman)
Mr T N Shobbrook BSc FRICS
Ms Cindy Rai LLB

Date of Decision: 14 March 2006

DECISION

The Application and the proceedings

- 1 The Tribunal is asked to exercise its jurisdiction under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) to dispense with the consultation requirements of section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”).
- 2 The Applicant consented to the application being considered without a Hearing. There has been no objection to such a procedure and accordingly the application has been considered and determined on the papers.

Background

- 3 The Applicant, Westcountry Housing Association, has a stock of 4000 properties, of which 935 are leasehold, spread over the West Country. The leasehold properties (being those properties which are the subject of this application, are listed in the schedule to the application.

- 4 The Applicant considered that better insurance rates could be obtained by entering into a three year block insurance agreement in respect of all its housing stock. Such an agreement is a qualifying long term agreement requiring public notice advertising within the European Union. Following compliance with the appropriate procedure the Applicant entered into a fixed three year term agreement with Brit Insurance plc to provide insurance cover for its entire housing stock.
- 5 The Applicant reported the outcome to all its tenants by letter dated 13 January 2006, (and a draft copy of which is included with the application). In it the Applicant states that as a result of the Applicant entering into the said agreement the buildings insurance premium payable by its leaseholders has been substantially reduced (by approximately 25%); furthermore the fixed rate agreed ensures that there will be no increase in the premium for the next three years.

Relevant law

- 6 Section 20ZA (1) of the Act states:-

“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, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

Under section (2), for the purposes of section 20 and 20ZA,

“qualifying long term agreement” means “an agreement entered into, by or on behalf of the landlord or superior landlord, for a term of more than twelve months.”

Under section 20ZA (4) the consultation requirements mean:-

requirements prescribed by regulations made by the Secretary of State. These are the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)

- 7 The relevant regulations in respect of this application are set out in Schedule 2 of the 2003 Regulations which apply where public notice is required. “Public notice” means “notice published in the Official Journal of the European Union pursuant to the Public Works Contracts Regulations 1991, the Public Services Contracts Regulations 1993 or the Public Supply Contracts Regulations 1995”. The requirements under Schedule 2 fall are set out in 8 paragraphs.

Consideration of the facts and the law

- 8 The basis of the application seeking dispensation is set out in paragraph 3 of the application.

The Applicant:-

- asserts that in order to obtain the best insurance rates it was required to opt to procure insurance cover for a term of three years.
 - states that due to the size of the tender, quotations were obtained via the EU process.
 - accepts that consultation requirements would therefore normally be satisfied by the compliance with the section 20 consultation procedures
 - maintains that the proposed insurance providers were not willing to quote for new business unless up to date information on insurance risk and exposure was provided
 - asserts that it was unable to provide the required 30 day consultation period for comment on tender prices because the proposed providers would not submit these quotations until a few days prior to the commencement of the 3 year agreement – prior to this they would only provide an “indication” of costs.
 - further says that to ensure compliance with section 20 would have resulted in insurers basing their tenders on quite old information which would have resulted in less favourable rates being offered.
 - accepts that the Applicant acted with the best of intentions in seeking to obtain the best insurance rates and that the three year agreement it has entered into with Brit Insurance plc has resulted in significant savings averaging out at a 25% saving to lessees. The question to be considered by the Tribunal is whether it is reasonable for it to grant dispensation from all, or any, of the consultation is the process that the Applicant followed, or failed to follow requirements of the 2003 Regulations. The result achieved by the Applicant notwithstanding its omission (to comply) is not the issue;
- 8 The Tribunal has considered whether the Applicant could have complied with the consultation procedure laid down in the 2003 Regulations.
- 9 The Applicant has produced no evidence to show that it made any attempt to follow the 2003 Regulations at all.
- 10 The purpose of the Regulations is to ensure that there is proper and full consultation with lessees and that the whole process is transparent
- 11 It appears to the Tribunal that the Applicant either decided that it could not comply with the Regulations – or did not consider them at all - and decided instead to rely upon a later application to the Tribunal, under section 20ZA, without due consideration of the 2003 Regulations and their requirements.
- 12 The purpose of section 20ZA is not to provide a means for landlords to ignore the Regulations altogether and to seek dispensation afterwards. For the Tribunal to allow an application under this section, without evidence of any attempt on the part of an Applicant to comply with the Regulations would frustrate the purpose of the Act and the Regulations made under it
- 13 The Tribunal has considered whether the Applicant could have complied with the Regulations in part, if not completely

- 14 Had the Applicant examined the different elements of Schedule 2 it would have seen that it was possible to have complied substantially with its provisions.
- 15 The letter written by the Applicant on 13 January 2006 to the lessees provides information that it could have provided before entering into the agreement. Paragraph 1 of the said Schedule, headed 'Notice of Intention' requires a landlord to give general information with regard to the intention to enter into a long term agreement. It does not require the provision of the final contract prices; the Applicant's claim that it could not comply with the Regulations because insurers would only provide 'indicative prices' was no barrier to it serving a Notice of Intention which requires description in general terms of relevant matters.
- 16 Paragraph 4 of the Regulations is headed 'Preparation of landlord's proposals'. It is an important part of ensuring transparency of the whole process. Under sub paragraph (2) the proposal must contain a statement setting out the parties to the proposed agreement and any connection between the landlord and any other party. Under sub paragraph (3) it is assumed that there is a connection in the circumstances as set out in (a) to (e).
- 17 Compliance by a landlord with sub-paragraph (2) is important to establish the transparency of process.
- 18 Sub Paragraph 4 (4) requires a landlord to estimate the relevant contribution of each tenant where it is reasonably practicable to do so. There are further provisions under 4 (5) and (6) with regard to the making of estimates with the fall-back provision under (7) that where it is not reasonably practicable for the landlord to comply then he should make a statement as to the reasons why he cannot comply

Findings of the Tribunal on the facts of the case

- 19 The Tribunal finds that no apparent reason has been provided by the Applicant as to why it could not have complied substantially with the 2003 Regulations.
 - Section 20ZA gives the Tribunal power to dispense with all or part of the requirements. The purpose of that section is not to give dispensation of all or the requirements where an applicant, as in this case, has made no attempt to comply.
 - To grant a dispensation in such circumstances would be to thwart and undermine the purpose of the legislation and Regulations.
 - In the present case the landlord Applicant is a major Housing Association. It is reasonable for its lessees to expect 'gold standard' compliance by the Applicant with all legal requirements.
 - Lessees were entitled to receive the information from the Applicant in accordance with the requirements of the Act before the qualifying long term agreement was entered into, in so far as the Applicant was able to provide this, rather than afterwards as actually happened.
 - As a result the lessees were deprived of any opportunity to respond and comment on the proposals.

- 20 In all the circumstances the Tribunal does not consider it reasonable to dispense with the requirements of the legislation either in part or in the whole.. Accordingly the amount that can be recovered from each lessee is limited to £100.
- 21 In its application the Applicant has sought guidance and advice from the Tribunal as to how to deal with a similar situation in the future. The Tribunal has indicated in this decision that it falls to a landlord to comply with the statutory requirements in so far as it is able to do so and then (if required) to seek dispensation under section 20ZA in respect of any elements with which it finds it not practicable to comply. Section 20ZA is not intended to enable a landlord to avoid the consultation requirements altogether.

Signed:
A.L.Strowger,
Chairman

A handwritten signature in black ink, appearing to read 'A.L. Strowger', written in a cursive style.

Dated: 1 April 2006