

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 7071 rented properties owned or managed by the Applicant and its associated companies

Applicant : Circle Anglia Ltd.

Respondents : Mrs. Y. Heath and 90 other Respondent tenants

Case number : CAM/33UC/LDC/2005/0005

Date of Application : 27th September 2005

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 MCI Arb

DECISION

DETERMINATION

1. The tribunal determines that it is reasonable to dispense with the statutory consultation requirements of s.20 of the Landlord and Tenant Act 1985 ("the Act") in relation to the supply of electricity and gas.
2. The Tribunal refuses to make an Order that the Applicants' costs of presenting this Application should not form part of any future service charge – Section 20C of the Act. This is subject to the terms of each individual lease or tenancy agreement which may or may not allow the Applicant to claim such a charge.

REASONS

Background

3. The tribunal received an application from the Applicant dated 27th September 2005 under Section 20ZA of the Act for dispensation from all or any of the

consultation requirements contained in Section 20 of the Act in relation to a qualifying long term agreement for the supply of electricity and gas to leaseholders.

4. Notice of the application together with information from the Residential Property Tribunal Service was given to the leaseholders of 7071 properties affected by the proposed agreement by the Applicant. Any Leaseholder who might be affected by the application was invited to respond. Within the time limit set, 91 requested that they be made Respondents to the Application and they were. Directions dated 10 April 2006 were issued. These were complied with by the Applicant who provided a statement of case. One Respondent submitted written representations but these did not oppose the making of this Order although an application was made pursuant to Section 20C of the Act asking the Tribunal to make an order that the Applicant's costs of making this application should not form part of any future service charges.
5. 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 9th June 2006 i.e. in excess of 28 day's notice. It was made clear that any party could ask for an oral hearing but none made any such request. There has been a short delay thereafter whilst the Applicant paid the necessary fee.

The Law

6. Section 20 of the 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 a leasehold valuation tribunal. The detailed consultation requirements for qualifying long term agreements which in this case require a public notice, are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). 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.

7. 20ZA of the Act allows a Leasehold Valuation 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


8. The Applicant intends to procure a contract for the supply of electricity and gas to its leasehold properties by means of a competitive tender under the OJEU procedure. Because of fluctuations in the prices for gas and electricity, suppliers will only hold quoted supply prices for a limited period which is less than the consultation period required by Section 20 of the Act.
9. Notice of Intention to Enter into a Qualifying Long Term Agreement where Public Notice is required was served on leaseholders on 19th May 2006. This explained that existing agreements for the supply of gas and electricity have expired and that the Applicant wished to enter into a new 2 year agreement to ensure value for money. It explained that the Applicant was not inviting nomination of suppliers from service charge payers because the proposed agreement requires public advertisement within the European Community. It indicated that any supplier wishing to express an interest could obtain information from the OJEU website.
10. 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 utilities 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. The full OJEU tender process will be undertaken.
11. Approximately 80 leaseholders applied to be Respondents to this application. A number of leaseholders made enquiries of the Applicant, who states that most required clarification and none objected to the proposal. One leaseholder’s son and daughter-in-law wrote to the Regional Manager of the RPTS but addressed the letter to the Applicants. They expressed concern about the ability of elderly persons to understand the paperwork and sought clarification. This was given by the Applicant and, as stated, the only leaseholder who contacted the Tribunal direct did not oppose the making of the order but asked for an order about costs

Reasons for the Decision

12. The Tribunal was persuaded by the Applicant's case that the proposed tendering process was the best way to procure the cheapest electricity and gas supplies for leaseholders, and that the best prices quoted by suppliers would not be held for more than a few days.
13. The cost of full consultation under schedule 2 of the Regulations and the increased price that would have to be paid for electricity and gas as a result of delay in awarding the contracts would have to be met by leaseholders.
14. The Tribunal also noted that an initial Notice of Intention was served on the leaseholders.
15. In making its decision to dispense, on the application under s.20ZA of the Act, the Tribunal is not making a determination as to the liability of individual leaseholders to pay for the supply of electricity and gas in their service charges. That could only properly be made on an application under s.27A of the Act.
16. 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 Act and in schedule 2 of the Consultation Regulations.

Costs of Application

17. This application has been made for the benefit of the leaseholders many of whom, by definition, will be of limited means. There has been much publicity that the cost of electricity and gas could be volatile over the next few years and it is clearly in the leaseholders' interests for a long term agreement for the supply of these services be obtained to limit price rises.
18. The Tribunal therefore has no hesitation in deciding that the reasonable costs of the Applicant in making this application should be recoverable from the leaseholders provided, of course, that the terms of their leases or tenancy agreements permit this. The Tribunal did not see those agreements.


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Bruce Edgington
Chair

Date 3rd July 2006