

LON/00AL/LDC/2006/0066

**APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985
(AS AMENDED)**



**Residential
Property
TRIBUNAL SERVICE**

Premises: All Right to Buy Council dwellings in the London Borough of Greenwich.

Applicant: London Borough of Greenwich

Represented by: Mr J Camack - Property Officer
Mrs S Butter-Capital Works Officer

Respondents: All Right to Buy Leaseholders in the London Borough of Greenwich.

Appearances: None

Application date: 3 October 2006

Hearing date: 5 December 2006

Decision date: Oral Decision given 5 December 2006.
Written Decision and Reasons dated 12/12/2006

Members of the Leasehold Valuation Tribunal:

Mr J Sharma JP FRICS (Chairman)
Mrs J Clark JP

Decision

1. The application is granted. In the consultation exercise currently being carried out by the London Borough of Greenwich in respect of its proposal to enter into a major works contract with Hertel (UK) Limited, the requirements of Schedule 2 paragraph 4(4), (5), (6) and (7) of the of the Service Charge (Consultation Requirements) (England) Regulations 2003 (the Regulations) are hereby dispensed with.

Background

2. This Tribunal received an application made under Section 20ZA of the Landlord and Tenant Act 1985 from the London Borough of Greenwich dated 3 October 2006 seeking dispensation from the consultation requirements set out in Schedule 2 paragraphs 4(4), 4(5), (4(6) and 4(7) of the Regulations 2003 in respect of a long term major works contract between the applicant and Hertel (UK) Limited. The contract is for a programmed inspection and cleaning of water tanks; comprehensive water tank, plumbing and water mains repairs; replacement of existing water tanks with new and upgrading systems in compliance with current and all future building regulations on an “ad hoc” basis over the next five years, with the possibility that the agreement could be extended to a maximum of ten years.
3. The reason the landlord is seeking partial dispensation with the consultation requirements is that it is impossible to provide the details required.

4. Directions for hearing were issued by a Tribunal on 18 October 2006. In compliance with Direction 2, the applicant notified the respondents, tenants' associations and other tenants' representatives of the application and the Directions. However none of the respondents contacted either the applicant or the Tribunal and none attended or was represented at the hearing on 5 December 2006.

The Law

5. Section 20 of the Landlord and Tenant Act 1985 requires landlords to consult with tenants who are required to pay more than £100 per annum for any contract that exceeds 12 months in duration ("A qualifying long term agreement"). The Regulations in particular set out the form and content of notices to be serviced under the Act. Schedule 2 provides the consultation requirements for a qualifying long term agreement for which public notice is required.
6. In addition to the Schedule 2 requirements, section 7(1) of the Regulations provides that where qualifying works are part of a qualifying long term agreement the landlord must also comply with the consultation requirements in Schedule 3 in respect of those works.
7. Where Section 20 applies to any qualifying works or a qualifying long term agreement, the service charge payable by a tenant is capped unless the

consultation requirements have either been complied with or dispensed with by a leasehold valuation tribunal.

8. By Section 20ZA(1) where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements, the tribunal may do so if it is satisfied that it is reasonable to dispense with the requirements.

The Application

9. The applicant has already complied with part of the Regulations in that Notices of Intention was served on 22 June 2005 and Notices of Proposal on 26 July and 23 August 2006. Observations received under these Notices have been responded to.
10. The applicant said that it is unable to provide the estimates required in paragraphs 4(4) or 4(5) because the properties have not yet been surveyed to determine the scope of the works packages. This will not be done until the contract has been entered into. Accordingly, the estimated cost of the works to any particular building or flat is not currently ascertainable.
11. In respect of the information required by paragraph 4(6), the tenderers have provided indicative rates for tender evaluation purposes, however the actual contract rates will not be determined until the scope of works is ascertained and the contract entered into for each works package. The provision of hourly

rates or unit costs at this stage would not give leaseholders any meaningful indication of the likely cost of the works.

12. The applicant, in its Notice of Proposal to the lessees, has provided an explanation of why the relevant cost information cannot be provided; also it is unable to provide an estimate of when this information will be available as required by paragraph 4(7). The dates at which particular works are carried out, and estimated costs are ascertained, will be determined by the parties in the course of the contract but are not known at this stage.
13. The Tribunal was informed that Schedule 3 consultation would be undertaken once the works had been identified to each block or estate and when these had been priced.
14. Schedule 3 of the Regulations requires the landlord to provide a notice to each tenant prior to the carrying out of works stating the works to be carried out (or a place where this description may be inspected) together with a statement of the total amount of expenditure likely to be incurred in connection with the proposed works, and invite observations on those proposals by the tenants.
15. It is at this stage that the applicant will provide details of the specific works which are to be undertaken pursuant to the maintenance contract, as well as an estimate of the cost of the works to each leaseholder, and an estimate of the cost of the works to their block.

Decision

16. Having regard to the submissions made and the documents supplied by the applicant the Tribunal is of the opinion that it would be impractical for the landlord to comply with sections 4(4) (5) (6) and (7) of Schedule 2 to the Regulations in that it cannot in advance calculate the cost to an individual tenant, as the properties have not been inspected and no specifications of actual works have been prepared. Works will be carried out as needed and the contractor paid accordingly. It is not yet possible to anticipate actual works and costs.
17. The Tribunal therefore considers that dispensation with these sections of the Regulations is reasonable in the circumstances.
18. In coming to this decision the Tribunal took into account the landlord's statutory obligations to consult with lessees under Schedule 3 of the Regulations. The parties should be aware that dispensation with any or all of the requirements of the Act does not indicate that the cost itself is reasonable or that the service provided is of a reasonable standard. The tenants may, if they wish, make an application when the works have been undertaken for the Tribunal to determine their liability to pay.
19. The applicant has undertaken to notify the respondents of this decision in the manner Notices of Intention was served. The time limit for any application

from respondents for leave to appeal will run from the date of such notification.

Tribunal:

Mr J C Sharma JP FRICS (Chairman)

Miss J Clark JP

CHAIRMAN 

DATE 12/12/06