



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

- Case Reference** : CHI/24UD/LDC/2019/0047
- Property** : Various scheme properties within Southampton, Eastleigh, Fordingbridge, Sawyers Close Estate Windsor, Longwood Park Estate, Langley, Petersfield and Portsmouth
- Applicant** : The Swaythling Housing Society, Drum Housing Society, Windsor & District Housing Association and Portal Housing Association
- Representative** : Mr Simon Phillips counsel, instructed by Devonshire Solicitors LLP
- Respondents** : The Lessees
- Representative** :
- Type of Application** : To dispense with the requirement to consult lessees about major works
- Tribunal Member(s)** : Judge D. R. Whitney
- Date and Venue of Hearing** : Havant Justice Centre, 16th August 2019
- Date of Decision** : 16th August 2019

DECISION

The Application

1. This is an application for dispensation from the consultation requirements provided for in section 20 Landlord and Tenant Act 1985.
2. The Applicants are various Housing Associations which form part of the Radian Group. Application was made seeking dispensation from consultation in respect of entering into a qualifying long term agreement for the supply of electricity and gas. The application relates to some 3,509 potential Respondents.
3. Directions were given on 13th June 2019 requiring the Applicant to send the Application and directions to all leaseholders. Any leaseholder who wished to object must do so by 3rd July 2019. 16 leaseholders objected and requested that the matter be listed for a hearing.
4. The Applicants solicitors filed a hearing bundle. References in [] are to pages within the hearing bundle.
5. No leaseholders attended the hearing. Mr Phillips of counsel represented the Applicants and Mrs C. Todd, Head of Residential Services of the Radian Group was also in attendance.

Hearing

6. At the commencement of the hearing the tribunal provided to Mr Phillips a letter dated 31st July 2019 received from Mr Ivor Cohen, a leaseholder, who had indicated he could not attend. Mr Phillips was content for the tribunal to have regard to this letter which it read and considered in making its determination.
7. Mr Phillips confirmed that three previous decisions had been made by the tribunal granting dispensation to the Applicants in similar circumstances [19-34].
8. Mrs Todd had provided two witness statements in support of the application. The first [13-45] was attached to the application and was dated 14th May 2019. The second was dated 12th August 2019 [218-220]. Mrs Todd confirmed to the tribunal that to the best of her knowledge the contents of both statements were true. She confirmed she believed that as set out at paragraph 10 of her first statement [15] the application affected some 3,509 properties.
9. It was confirmed that only one leaseholder had returned the tribunal form positively agreeing the application. The Applicants were not aware of any other objectors save for the 16 which included Mr Cohen.
10. Mr Phillips confirmed the second witness statement of Mrs Todd was filed to explain the current situation. In short the current agreement for supply of gas and electricity was due to expire at the end of July

2019. The Applicants had negotiated an extension of this contract for a period of 11 months to enable this application to be determined. Given the period of extension was not more than 12 months the Applicant did not have to consult over the same. It was submitted this was reasonable and proportionate to ensure the Applicant could obtain best value for the supply of gas and electricity for communal supplies.

Determination

11. The tribunal had regard to all of the documents before it and the oral submissions made at the hearing in making its determination. It considered carefully each of the objections including the letter from Mr Cohen.
12. In short all of the objections referred to a lack of communication from the Applicants with the Respondents. Further the concerns as how any such new contract may lead to increases in the service charges at the properties.
13. The tribunal acknowledges and understands the Respondents concerns. However the tribunal accepts that given the requirements under EU Procurement Regulations and the way the energy supply market operates it is not possible to fully comply with the statutory consultation requirements. This was acknowledged and accepted in each of the three previous decisions copies of which are within the bundle.
14. This tribunal is satisfied that it is reasonable for the Applicant to appoint a third party intermediary to arrange long term energy supply agreements for a period of up to three years as referred to in the original application [1-11]. Such a process is recognised as ensuring best value is achieved as identified within the documents supplied by the Applicant. It is widely recognised that it is not possible to consult in the way the legislation strictly requires and Section 20ZA of the Landlord and Tenant Act 1985 permits the tribunal to dispense with the strict requirements.
15. The tribunal is satisfied that the process proposed by the Applicant of appointing a third party intermediary to obtain competitive quotes from suppliers in the energy market as identified in the first witness statement of Mrs Todd will ensure that the best interests of the leaseholders is achieved.
16. **The Tribunal dispenses with the consultation requirements in respect of the Applicant looking to enter into a qualifying long term agreement for the supply of gas and electricity for a period of up to 3 years from the determination of the current contract.**

17. This decision is confined to the dispensation from the consultation requirements in respect of the Applicant entering into a qualifying long term agreement for the supply of gas and electricity. The Tribunal has made no determination on whether the costs of those works are reasonable or payable. A leaseholder retains the right to challenge the costs of the supplies by making application to the Tribunal under section 27A of the 1985 Act.
18. At the end of the hearing the tribunal advised the parties present of this decision with written reasons to follow.
19. The tribunal will send this decision to the 16 leaseholders who have objected and the Applicant will ensure that a copy is provided to all leaseholders exhibited to the first witness statement of Mrs Todd.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking