



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

Case reference : **LON/00BB/LDC/2019/0187**

Property : **Various properties in East Village,
London E20**

Applicant : **East Village Management Limited**

Respondents : **The leaseholders of the Property as per
the application**

Type of application : **To dispense with the requirement to
consult leaseholders in relation to a
proposed qualifying long term
agreement**

Tribunal members : **Judge P Korn
Mr S Mason FRICS**

Date of decision : **25th November 2019**

DECISION

Decision of the tribunal

The tribunal dispenses with the consultation requirements in respect of the proposed qualifying long term agreement which is the subject of this application to the extent that they have not already been complied with.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) from the consultation requirements imposed on the landlord or management company by section 20 of the 1985 Act in relation to a proposed qualifying long term agreement, to the extent that those requirements have not already been complied with.
2. The Property comprises various purpose-built apartment blocks arranged into plots in the London E20 postcode area. The Applicant is the entity responsible for providing management services to the Property in its capacity as party to an overriding lease.
3. The proposed qualifying long term agreement which is the subject of this application relates to the supply of electricity.

Paper determination

4. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant’s case

5. The Applicant’s current contracts for the site-wide electricity supplies for running services with the estate and each block are for a 12 month period expiring on 30th November 2019. The Applicant now seeks potentially to enter into an agreement with an electricity supplier to be chosen once a full tender exercise has been carried out. That agreement will be a qualifying long term agreement if it is for a term of greater than 12 months, and the Applicant seeks dispensation from compliance (or full compliance) with the consultation requirements imposed by section 20 of the 1985 Act in the event that – once the tendering process has been gone through – a contract for a term of greater than 12 months presents the best value.
6. Based on indicative tender pricing and market review reports, the Applicant states that contract prices for periods greater than 12 months are on average secured at lower rates. Indicative tender pricing obtained in July 2019 demonstrates that a saving of about 3% can be achieved if a 36 month contract

rather than a 12 month contract is entered into. It is therefore in leaseholders' interests to be able to benefit from this. Due to the nature of the procurement method, in particular the same-day pricing and contract acceptance requirements imposed by the commodities market, it is not possible to follow the section 20 consultation procedure because the price received at the end of the purchasing window is the price that has to be paid. The market operates in such a way that bids are requested and contracts are signed within a 24 hour period, and due to pricing volatility suppliers are unwilling to extend this period. Therefore, the price achieved cannot be held for the period necessary to carry out consultation.

7. The Applicant's agents, Savills (UK) Limited, have written to leaseholders notifying them that it has made this application for dispensation and explaining why.

Responses from the Respondents

8. Savills have also provided a written statement which includes a statement of truth. They confirm in that statement that notice of the application has been sent to all leaseholders and that as at 10.19am on 18th November 2019 no responses or objections to the application have been received from any leaseholder.

The relevant legal provisions

9. Under Section 20(1) of the 1985 Act, in relation to any qualifying long term agreement "*the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with in relation to the ... agreement or (b) dispensed with in relation to the ... agreement by ... the appropriate tribunal*".
10. Under Section 20ZA(1) of the 1985 Act "*where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any ... qualifying long term agreement ..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*".

Tribunal's decision

11. The tribunal notes the circumstances in which the application for dispensation has been made. Whilst it is unclear why the Applicant has left it so late to make the application, we are satisfied that because of the way in which the market operates it is not possible for the Applicant to go through a full consultation process whilst at the same time securing a price which is only available within a short window of opportunity.
12. The Applicant's evidence, which has not been contradicted by any of the Respondents, is that having the flexibility to enter into contracts in the manner

set out above has the potential to secure savings for leaseholders which would not otherwise be available. In addition, the Applicant has confirmed that it will still undertake a full tender exercise; it will just not be able to consult or liaise with leaseholders, save insofar as it has communicated with them so far.

13. None of the Respondents has raised any concerns with the tribunal nor opposed the application for dispensation. There is no evidence before us that leaseholders will be prejudiced by the lack of consultation, and indeed the Applicant's argument is that leaseholders will actually benefit from this approach.
14. On the basis of the potential benefits of the Applicant's approach and the lack of objections from the Respondents, we are satisfied in this case that it is reasonable to dispense with the formal consultation requirements in respect of the potential qualifying long term agreement which is the subject of this application to the extent that they have not already been complied with.
15. **For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the electricity to be supplied in due course.**

Cost applications

16. No cost applications have been made.

Name: Judge P Korn

Date: 25th November 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.