



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

Case Reference : **CHI/00MR/LDC/2024/0066**

Property : **Various Properties (see schedule)**

Applicant : **Portsmouth City Council**

Respondents : **Various Properties (see schedule)**

Type of Application : **s.20ZA**

Tribunal Members : **Judge D Dovar
Mr Bourne MRICS
Mr Ashby DipSur FRICS**

**Date and venue of
Hearing** : **1st October 2024, Havant**

Date of Decision : **20th November 2024**

DECISION

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1. This is an application by the city council for dispensation under s.20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of their entering into a qualifying long term agreement for the provision of electricity to a large number of residential blocks in their City; in particular for the provision of heating and lighting to the communal areas.
2. The need for this application arises because the Applicant intends to enter into an agreement with an energy supplier which will be an agreement for the supply of electricity which will last longer than one year. Therefore the agreement is one which is governed by s.20 of the 1985 Act and requires either the statutory consultation process to be followed or dispensation obtained in default. If it does not do so then it will be restricted to recovering £100 per leaseholder per year for any costs incurred under the agreement.
3. The difficulty the Applicant faces is that in order to procure the most competitive price for electricity, it needs to engage with a dynamic purchasing system. As described to the Tribunal, this means that:
 - a. A broker identifies a number of potential suppliers, in this case 17 and pre-vets them for suitability;
 - b. An offer is then made from those potential suppliers with a fixed price for a period of time, in this case 18 months;
 - c. Once the offer is made, the Applicant has one day to confirm and enter into a contract with one of the suppliers as due to the

fluctuations in energy prices, the price offered is only fixed for one day.

4. The value of the contract is around £2mn for all of the council's properties.
5. In terms of consultation that has been carried out in this case, a letter explaining the process was sent out to the leaseholders on 8th April 2024, however, that had not complied with schedule 2 of the Regulations. The application itself was posted on the Applicant's website and the letter of 8th April had a link to that resource. Those who requested a hard copy were provided with one and sent the response form required by the directions given by the Tribunal. The hearing bundle was also made available via the website.
6. Since the making of the application, the contract has in fact been placed, on 12th August 2024, with Statcraft. The Tribunal was told they are one of the biggest renewal energy companies in Europe. Of the tenders returned through the process outline above, they gave the cheapest offer.
7. There was one objection, from a Mr Requiz. The general tenor of his complaint was that the Applicant was a poor landlord and should face closer scrutiny, not less. He also thought this was a ruse by the Applicant to avoid scrutiny. He also doubted whether the process identified and the contract entered into was of financial benefit to the leaseholders. He was keen to have cheaper bills, but not at the expense of bypassing the required consultation.

8. The specific consultation requirements for works within s.20 are set out in the Service Charges (Consultation etc.) (England) Regulations 2003/1987. Schedule 1 sets out the requirements for qualifying long term agreements other than those for which public notice is required. Schedule 2 provides for such agreements where public notice is required. The Tribunal was informed by the Applicant that despite the value of the contract, and its position as a public body, the latter did not apply. On the basis of that, we have considered schedule 1 and have reviewed the requirements of that schedule against any prejudice that may have been suffered by the failure to adhere to parts.
9. Firstly, notice must be given of an intention to enter into an agreement. That should describe in general terms the agreement and reason for entering into it. It should also invite observations and nominations. The 8th April 2024 letter, the website and indeed this application met a number of those requirements, save for the invitation of nominations. In the circumstances, the reason for seeking dispensation in the first place is because the process seems to limit those from whom quotes would be obtained.
10. A further omission was the requirement to seek estimates from various parties. Again the process envisaged in this case, explains why it was not possible to do that. The next omission was the requirement to prepare and distribute proposals containing details of the costs under the agreement and to have regard to observations made. Again the process envisaged in this case, made that impossible as the cost would not be known until a day before acceptance was required. Had this been a

Schedule 2 agreement, it seemed that the Council may have had other obligations with regard to tendering, but many of the requirements it could not meet would have been disapplied.

11. Whilst there are obvious elements of the process that have been omitted, the Tribunal is satisfied that the nature of the exercise means that not only will the Respondents not be prejudiced, but they are likely to receive a significant benefit from the Council using its portfolio to access energy markets which would not be available to those with lesser property interests. Further that this process would obtain the best price obtainable. Therefore notwithstanding Mr Requiz's objection, the Tribunal did not consider there was any real prejudice. In terms of his concern over lack of oversight on the process, he has some comfort in that the Council has set out their approach which has led them to contract and that has been viewed by both the Respondents and the Tribunal.
12. Accordingly, the Tribunal will grant dispensation from the consultation requirements in respect of the agreement entered into with Statcraft, but on condition that the Council posts on its website the material terms of the contract, including the price obtained, as well as the prices offered by the other tenders.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.