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HM COURTS AND TRIBUNALS SERVICE

NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

MAN/00CG/LDC/2012/0003

REASONS FOR DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 20ZA LANDLORD AND TENANT ACT 1985.

Applicant:	Urban Splash (Park Hill) Limited
Respondents:	(1) Great Places Housing Association (2) Mr A Jackson
Re:	Phase 1, Park Hill Sheffield, S2 5PN
Date of Application:	8 February 2012
Date of Hearing:	5 March 2012
Applicant represented by	Mr R Bhose of Counsel
First respondent represented by	Ms C Millington

Members of the Leasehold Valuation Tribunal:

Mr. M. Davey LL.B (Chairman)
Mrs. E Thornton Firkin FRICS (Valuer Member).

Date of Tribunal's Decision: 5 March 2012

DECISION

Having heard and read respectively, the oral and written submissions of the parties, the Leasehold Valuation Tribunal determines that the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) are dispensed with in respect of the proposed Heat Supply Agreement between the Applicant and Sheffield Environmental Services Limited for the supply of space heating and hot water to the apartments within Phase 1 of the redevelopment of Park Hill Sheffield as set out in the Applicant's statement of case and evidence submitted to the Tribunal.

Reasons for decision

These are the reasons for the above decision of the Leasehold Valuation Tribunal which was given to the parties on 7 March 2012.

The Application

1. On 8 February 2012 Urban Splash (Park Hill) Limited ("the Applicant") made an Application, through its solicitors, Trowers & Hamlins LLP of Manchester, to the Leasehold Valuation Tribunal ("the Tribunal"). The Application, which was made under section 20ZA of the Landlord and Tenant Act 1985 ("the Act"), sought dispensation from compliance with the consultation requirements provided for by section 20 of the Act. The requirements in question are those set out in Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the regulations"). The Application was in respect of a proposed Heat Supply Agreement ("the Agreement") for a term of 25 years between the Applicant and Sheffield Environmental Services Limited ("SESL"). The Agreement was for the supply of heat and hot water to two groups of residential apartments in Phase 1 of the redevelopment of Park Hill, Sheffield (a former local authority council estate).

2. The properties which are the subject matter of the application (of which the Applicant is a lessee) are

   (a) the 78 apartments within Flank A of the North Block of Phase 1 and
   (b) the other 185 proposed apartments within Phase 1.

3. The heat and hot water is to be generated from SESL's existing large scale district heating system which uses burned household waste to heat water which is pumped around the district heating network and then into buildings around the city which use their own installations to use that hot water and to convert it into space heating.

4. The First Respondent, which does not oppose the Application, is a private registered provider of social housing. It has entered into an agreement for a lease with the Applicant (dated 20 March 2008) under which it has agreed to enter into individual underleases for all 78 apartments in Flank A as well as 214 additional apartments within the overall development. Of the 78 apartments in Flank A the Respondent intends to sublet 26 of them for social rent and has agreed with the Applicant that the latter shall market the remainder for sale on long leases. If and when they are sold they will be released from the Respondent's lease from the Applicant. The Applicant will then grant underleases to those purchasers. One such sale has taken place to the Second Respondent, Mr Adam Jackson, who has entered into an agreement for an underlease of one of the apartments, viz; 19 Norwich Street. Mr Jackson has confirmed in writing that he does not oppose the Application.

5. The agreement is a qualifying long term agreement ("QLTA") within the meaning of section 20ZA(2) of the Landlord and Tenant Act 1985 ("the 1985 Act"). It is one to which section 20 applies because individual underlessees will be required to pay more than £100 per annum. The Applicant considers that the Respondents, having agreed to enter into leases, are arguably tenants for the purposes of the 1985 Act.

6. The Applicant argues that it is in fact impossible for it to comply with the substantive requirements of Schedule 1 to the Regulations because SESL is the only supplier with whom it could enter into an agreement for supply of heat and hot water under the district heating system. Further, or alternatively, it argues that it is impossible to wait until all the apartments are completed and underleased because completion requires a working supply of heat and hot water.

7. The Applicant argues that in these circumstances it would be reasonable for the Tribunal to dispense with the requirements of Schedule 1 of the Regulations.

The Hearing

8. At the hearing on 5 March 2012, Mr Bhose, counsel for the Applicant, took the Tribunal through the Applicant's statement of case. He explained that the Applicant had carefully considered the alternative methods of providing heating and hot water to the flats and assessed the pros and cons of each. The alternatives were (1) individual gas boilers in apartments (2) individual electric systems and (3) centralized gas boilers within Park Hill itself. The first was rejected as practically

unfeasible because of the physical nature of the development making it impossible to flue individual boilers and lack of space in the risers to install individual gas supplies.

9. The other methods were also rejected for a variety of reasons. Indeed the Applicant was satisfied that the option they had chosen offered the best value to lessees for a number of stated reasons which explained the benefits of opting for the agreement with SESL. The arguments for and against the different options were exhaustively analysed in an internal report "Park Hill – District Heating Report (21 November 2011) and in an independent report for the tribunal prepared by WYG Engineering and commissioned by the Applicant (January 2012). Both favoured the option of the agreement with SESL proposed by the Applicant.

10. The costs of the supply of space and water heating would be recoverable by way of service charge provisions in the underleases of the apartments. If the Application is successful future prospective purchases of apartment underleases will be informed of the Application and the outcome before the point of sale.

The Law

11. Section 20 of the Act provides that:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

.....

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

[The appropriate amount is an amount which results in the relevant contribution of any tenant being more than £100 in any accounting period. See regulation 4(1) of the regulations].

12. Section 20ZA(2) provides that "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

[Subsection (3) provides for exceptions that do not apply in the present case].

13. The relevant consultation requirements are set out in Schedule 1 of the regulations (Qualifying Long Term Agreements – no public notice).

The Applicant's case

14. Mr Bhose stated that, in respect of the above requirements, whilst it would be possible for the Applicant to give written notice of its intention to enter into a QLTA to each tenant (which at present arguably means the Respondents describing, in general terms, the relevant matters stating the reasons why the agreement or works are necessary and inviting written observations; the necessary invitation to the tenant(s) to nominate a person from whom the landlord should try to obtain an estimate would be hollow unless that person nominated SESL, being the sole provider of such a system.

15. It follows also that the Applicant could not try to obtain an estimate from any nominated person (save SESL if nominated) nor could it prepare at least two proposals because SESL is the only possible supplier of heat and water through this system.

16. Mr Bhose said that in these circumstances where there is a monopoly supplier it is an appropriate case for dispensation. He listed the reasons why, in the Applicant's submission, it would be reasonable for the tribunal to exercise its discretion under section 20ZA to dispense with compliance with the requirements in Schedule 1 to the regulations.

(1) The preferred option provides the greatest benefits of all the options available including likely future costs of consumption.

(2) The 25 year agreement would not require significant capital investment by the Applicant because it uses the existing energy centre.

(3) It obviates the need to deal with a monopoly supplier in the short to medium term with all the potentials costs of having to replace the system if that deal were to prove not to be reasonable.

(4) The terms are independently verified to be the best available and the 5 year break clause protects against the unforeseen.

(5) The Respondents consent to the Application.

(6) Future purchasers of apartments will be able to make informed choices whether they want to proceed with a purchase in the light of the heating system provided.

(7) Refusal of dispensation would mean that the Applicant would have to design and install its own district heating system when that is not the best option for all concerned.

(8) Time is pressing because the development needs to be completed with an adequate heating system in place for the apartments.

Discussion and decision

17. Section 20ZA (1) of the Act provides that where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

18. The Applicant says that the circumstances in the present case are such that it is impossible for it to comply with the relevant requirements for the reasons outlined above.

19. Section 20 is concerned with service charges as defined in section 18 of the Act. Section 18 provides that this means an amount payable by a tenant of a dwelling as part of or in addition to the rent for the matters set out in section 18(1)(a) (which includes services) and the whole or part of which varies or may vary in accordance with the relevant costs. Lease or tenancy includes an agreement for a lease and the expressions landlord and tenant are to be construed accordingly (section 36).

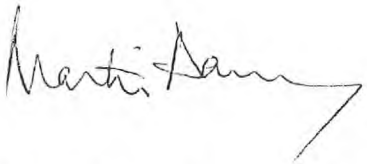
20. The Tribunal finds it tolerably clear that in the present case the Respondents are tenants for the purposes of section 20. The consultation requirements apply whether or not the immediate tenant of the landlord who carries out the works is an individual in occupation. (See for example *Paddington Walk Management Ltd v The Governors of Peabody Trust* ([2009] 2 EGLR 123 (HH Judge Marshall QC Central London County Court where the freeholder should have complied with section 20 even though its immediate tenant was the head tenant under a long lease of the flats and common parts in the building who in turn planned to sub-let the flats on long leases to individuals).

21. It follows that both Respondents in the present case are entitled to be consulted, as required by section 20, unless the Tribunal grants dispensation under section 20ZA. The question therefore is whether the grounds for non-compliance given by the Applicant make it reasonable for the Tribunal to so dispense. The Tribunal finds that they are. As the Applicant clearly appreciates it is important to distinguish between the reasonableness of dispensing with the requirements and the reasonableness of the agreement or the costs involved. A determination under s.20ZA is only concerned with whether or not it is reasonable to dispense with the requirements.

22. The Tribunal agrees in the present case that the reasons advanced by the Applicant in support of the tribunal dispensing are cogent and compelling. Indeed the Respondents agree with the Applicant's request. This development cannot go ahead without an adequate heating system in place and the system chosen is the district heating system. This requires a long term agreement and in practice there is only one supplier of that service. For this and the other reasons advanced by the Applicant the Tribunal agrees that it would be reasonable to grant dispensation.

23. Strictly speaking it would be possible, as the Applicant concedes, for the Applicant to comply with the 'first notice' requirement, albeit that a request for the tenants to suggest alternative providers would have been impossible for them to comply with. However, on the facts of this particular case the Respondents are fully aware of the details of the proposed agreement and indeed are content that the dispensation be granted.

24. In these circumstances therefore the Tribunal agrees with the request and grants dispensation from compliance with all of the requirements set out in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the proposed Heat Supply Agreement between the Applicant and Sheffield Environmental Services Limited for the supply of space heating and hot water to the apartments within Phase 1 of the redevelopment of Park Hill Sheffield as set out in the Applicant's statement of case and evidence submitted to the Tribunal.



Martin Davey
Chairman