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LONDON RENT ASSESSMENT PANEL-

**DECISION ON AN APPLICATION UNDER SECTION 20ZA LANDLORD
AND TENANT ACT 1985**

Ref: LON/00BE/LDC/2013/0045

Properties: Various properties within the portfolio of the London Borough of Southwark

Applicant: London Borough of Southwark

Respondents: The leaseholders of the various properties within the portfolio of the London Borough of Southwark

Appearances for Applicant: Mrs C Blair, Capital Works Manager
Mr C Owen, Energy Manager

Appearances for Respondents: The Respondents were not represented, and none of them attended the hearing

Hearing date: 26th June 2013

Determination date: 26th June 2013

Tribunal: Mr P Korn (chairman)
Mr T Sennett MA FCIEH

BACKGROUND

1. On 19th May 2013 the Tribunal received an application from the Applicant seeking dispensation from certain of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) ("**the Act**") in respect of a qualifying long term agreement.

2. The application relates to long term agreements for the procurement of electricity serving all blocks and estates across the Applicant's property portfolio affecting some 16,000 addresses. It follows previous decisions by the Leasehold Valuation Tribunal (LVT) to dispense with aspects of the consultation requirements in respect of the majority of the Applicant's portfolio (LON/00BE/LDC/2008/0106), two further framework agreements for the supply of gas to central boilers serving communal heating systems (LON/00BE/LDC/2011/0052) and then an extension of those agreements to include the Aylesbury and North Peckham Estates (LON/00BE/LSC/2011/0168).

THE APPLICANT'S CASE

3. The Applicant proposes to enter into an agreement for the supply of electricity to the Properties to replace the current fixed price supply contract which is due to expire on 31st March 2014. The Applicant wishes to add this agreement to the existing agreements referred to in paragraph 2 above, which are flexible framework agreements with LASER running to September 2016.
4. In written submissions, the Applicant states that the largest impact on the end electricity price is the amount being bought, the decision when to buy and how much future electricity to buy at that time. The energy market is extremely volatile and prices can vary significantly on a daily basis. A flexible procurement approach helps to negate sudden price rises by forward-purchasing and trading on the wholesale market.
5. The Applicant has identified two flexible schemes available to it (measured against a set of key best practice criteria), namely LASER and Government Procurement Services (GPS). LASER is a local government purchasing consortium operating in London and the South East representing over 100 authorities. GPS is the national procurement partner for all UK public services. During 2011 and 2012 a full assessment was carried out by the Applicant's energy team as to the best value option available to the Applicant, and the criteria used to determine best value are set out in the Applicant's written submissions. The Applicant states that in the course of this process LASER were demonstrated to be the best option financially and from a customer service perspective.
6. The Applicant states that large financial savings have been made since originally using the framework agreement with LASER for gas supplies, with annual performance reports presented in February 2013 showing prices almost 25% less than those obtainable direct from British Gas.
7. The Applicant sent out a Notice of Intention to all leaseholders and has received about 35 observations which it has considered, and it has replied or is in the process of replying to all observations requiring a

response. The Applicant is unsure whether or not the proposed agreement in relation to the supply of electricity through LASER technically constitutes a long term qualifying agreement and the application is being made on the assumption that it does.

8. Due to the nature of the proposed flexible contract, the Applicant is unable to provide to leaseholders a statement as to the actual or estimated unit cost or hourly or daily rate of charge for the electricity or an estimate of the extent of each leaseholder's contribution or of the total expenditure. As a result, to the extent that the proposed agreement is a long term qualifying agreement the Applicant is unable to comply with the consultation requirements save to the extent that it has already done so.

POINTS RAISED AT THE HEARING

9. At the hearing, Mr Owen said that the Applicant could not terminate the existing fixed price contract early without having to pay a penalty equal to the total value of the remainder of the contract.
10. Mr Owen acknowledged that there existed other flexible contract options but said that the LASER and GPS ones were the only ones available to Southwark. He confirmed that the Applicant had satisfied itself that the LASER option represented best value for leaseholders, and this assessment was primarily based on historic data and the Applicant's confidence in the safeguards in place to monitor performance under the LASER contract. The Applicant did not currently have a seat on the monitoring board but it could opt to do so in the future.
11. Mrs Blair commented on the observations received from leaseholders. Many were supportive and others made suggestions such as the use of alternative forms of energy. One leaseholder had argued that a fixed price contract would be cheaper, but for the reasons referred to above the Applicant disagreed.

THE LAW

12. Under Section 20(1) of the 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 ... or (b) dispensed with ... by ... a leasehold valuation tribunal*".
13. Under Section 20ZA(1) of the Act "*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 long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*".

APPLICATION OF FACTS TO LAW

14. As noted above, the Applicant has made its application on the basis that it considers that the proposed agreement is or may be a qualifying long term agreement within the meaning of Section 20(1) and Section 20ZA(1) of the Act and that these provisions therefore apply to the proposed agreement.
15. The Tribunal has considered the Applicant's written and oral submissions, the Respondents' written observations and the Applicant's replies thereto and the previous LVT decisions granting dispensation in respect of the Applicant's other utility agreements with LASER.
16. The Tribunal was impressed with the clarity of the Applicant's submissions. It notes the logic behind seeking flexible procurement and behind waiting for the existing fixed price contract to expire. On the face of the Applicant's submissions the Tribunal is satisfied that the Applicant has taken all reasonable steps to comply with the consultation requirements to the fullest extent possible.
17. The Respondents' observations are generally supportive of the Applicant's approach, and the few that are critical or raise other issues do not, in the Tribunal's view, constitute grounds for refusing dispensation.
18. The Tribunal notes that the Applicant has carried out a detailed assessment as between the relevant merits of the LASER and GPS options, and whilst ideally there should be more options from which to choose the Tribunal accepts the Applicant's evidence – in the absence of evidence to the contrary – that there were only two realistic options.
19. The Tribunal also notes that there is a monitoring process in place and that the arrangements will only last until September 2016. It is worth mentioning in passing that had this been a much longer term contract the Tribunal might have expected to see, for example, a contractual right for the Applicant to terminate early without (or with no significant) penalty in the event that the contract proved to offer less good value than originally thought.
20. The Tribunal has not been provided with sufficient information to determine whether the consultation requirements do apply, but on the assumption that the consultation requirements apply the Tribunal is satisfied that it is reasonable to dispense with those of the requirements which have not already been complied with. The Applicant has complied with the initial stages of the consultation process and has invited feedback. It is not possible for the Applicant to comply further in relation to the proposed agreement, and in the Tribunal's view the Respondents will not suffer prejudice as a result of non-compliance with the remaining aspects of the consultation process. Indeed, based on the information provided, it seems to the Tribunal that the

Respondents are likely to benefit from the proposed arrangements, and if the Tribunal refused to give dispensation the Applicant would either have to risk suffering an enormous service charge shortfall or choose an option which is likely to be less advantageous to leaseholders.

DETERMINATION

21. The Tribunal hereby determines to dispense with those of the consultation requirements not yet complied with in relation to the agreement which is the subject of this application to the extent (if at all) that it constitutes a qualifying long term agreement for the purposes of Sections 20(1) and 20ZA of the Act.
22. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness or otherwise of the cost of electricity supplied as a result of the Applicant entering into the agreement.
23. No cost applications have been made.

Chairman:  P Korn

Dated: 26th June 2013