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

Case Reference : **LON/00BG/LDC/2016/0122**

Property : **Various properties in London E3 and E14**

Applicant : **Poplar Harca**

Representative : **Capsticks Solicitors**

Respondents : **Various leaseholders as set out in the schedule attached to the application**

Representative : **None**

Type of Application : **For dispensation of the consultation requirements under section 20ZA**

Tribunal Member : **Judge O'Sullivan**

Date of Decision : **9 February 2017**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The application is made against the various leaseholders in the schedule attached to the application form (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant is the freehold owner of a large number of residential properties in E3 and E14 which are subject to long leases held by the Respondents. The Applicant seeks dispensation in respect of fixed term contracts that it wishes to enter into with utility companies for the supply of communal gas and electricity. Dispensation is sought for two specific contracts entered into within a 12 month period from the date of the decision, namely the gas supply contract expiring on 30 September 2017 and the electricity supply contract expiring on 31 March 2017.

The background

4. The application was received on 9 November 2016. Directions were made dated 14 November 2016 further to which a hearing took place on 14 December 2016. At that hearing the tribunal decided to postpone the hearing and gave further directions of the same date. This was because several leaseholders attended the hearing and spoke of there being much confusion amongst leaseholders about the application and the tribunal decided they should be given an opportunity to file a statement of case. The directions provided for the service of a statement of case by any leaseholders present at the hearing.
5. The application was further considered by the tribunal by way of a paper case on 26 January 2017 on the basis of the papers received. Following receipt of a further statement by Mr Chowdhury, the Applicant requested permission to file a witness statement in reply. Permission was given to the Applicant to file a further statement and the application was further considered on 9 February 2017.
6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant's case

8. The Applicant had filed a bundle containing its statement of case, replies received from the Respondents and its reply to those submissions. It also relied on the statement of Mr Bhuta dated 27 January 2017.
9. In its statement of case the Applicant set out its rationale behind the application. It explained that the Applicant seeks to dispense with the section 20 consultation requirements in relation to the supply of gas and electricity to communal boilers and communal parts of the Applicant's Estates. It stresses that it does not concern the power supply to individual residents' flats. The problem for the Applicant is that following the section 20 procedure it would be obliged to comply with the EU Procurement Regulations which require a "standstill" of ten days before the decision to award the contract and the signing of the contract itself. It submits that the energy market does not operate in this way as bids are requested and contracts signed within a 24 hour period. The method of reconciling these conflicting situations is to use a third party intermediary (a "TPI") to obtain bids from energy suppliers. The Applicant seeks to enter into a traditional fixed term contract for the supply of gas and electricity to the communal areas as it believes that this type of contract will offer good value for money in the current volatile market conditions without of contract prices changing on an hourly basis. Such a contract it is believed will offer some stability and will enable leaseholders to take advantage of "economies of scale" through the Applicant's purchasing power. As an alternative it is also possible for the Applicant to select contract terms not exceeding 12 months although it is anticipated that a longer term contract will offer better rates and stability in prices over the contract term. It is also said that the application made to allow the flexibility to select the contract term which represents the best value for money for residents.
10. The Applicant says that early indications in respect of the electricity supply procurement show that in-contract rates can be secured for 10.80 p per kwh compared to out of contract prices of 21.25p per kwh and that this equates to a favourable saving when comparing a contract worth £1.1 million.
11. The Applicant says it will be tendering for several types of contract including fixed term for 3 years, two years and one year to ensure it has a good idea of the overall market conditions.
12. Notices of Intention were served on 16 November 2016 and copies included in the bundle. Costs will be funded from the leaseholders' management and administration charges.
13. The Applicant intends to use the services of Monarch Partnership who will act as brokers in the procurement for the has supply contract.

14. 17 responses have been received (representing 0.56% of the total) and the most common reason was the mistaken belief that the Applicant could change the energy supplier to individual flats. This is confirmed not to be the purpose and the application concerns solely the supply of electricity to communal areas, car park lighting, corridors, entry call systems etc plus the supply of gas to communal boilers.
15. The statement sets out the replies received and comments on the points raised in each case (see below).
16. The witness statement of Mr Bhuta addresses the further concerns raised by Mr Chowdhury. It is confirmed that Mr Chowdhury's block does not have a communal boiler and he is therefore unaffected by the gas supply contract.
17. The Applicant apologises for the fact that Mr Chowdhury's first statement was in error not included in the bundle. A copy of that statement is attached as exhibit. The Applicant's response to both of Mr Chowdhury's statements is included below.
18. The Applicant says that there is no prejudice to the leaseholders in granting dispensation as the use of the TPI is considered to be best practice, the pricing structure will save the Respondents money and they may challenge the reasonableness of the costs under a separate application subsequently should they wish to do so.

The Respondents' position

19. Several leaseholders objected to the application and the objection and the Applicant's response is summarised as follows;
 - (a) 13 Bowden House, 138 Knapp Road and 124 Belton Way – the leaseholders raised a number of concerns regarding the brokerage fees, an assurance that the target price would be met, a condition that the Applicant would be required to provide details of the supplier and contract and that the Applicant be obliged to notify the leaseholders of the commencement before its start date. The Applicant confirmed that Monarch receive a commission from the energy supplier rather than the Applicant incurring costs, no assurance can be given in relation to the indicative price as the markets are volatile, and that it would publish the pricing details, length of contract and commencement date on its website.
 - (b) 29 Chagford House – despite a reply form indicating an intention to oppose, no statement was filed;
 - (c) Flat 12 Upcott House - despite a reply form indicating an intention to oppose, no statement was filed;

- (d) 12 Prioress House – the Respondent confirmed that she did not want to change the individual supplier to her flat and the Applicant confirmed in response that the application related solely to the provision of gas and electricity to the communal areas and did not concern the individual energy supplier;
 - (e) 16 Upcott House and 43 Brabazon House - despite a reply form indicating an intention to oppose, no statement was filed;
 - (f) 70 Rainhill Way - the leaseholder raised some questions in relation to the duration of the contracts and costs and these were answered;
 - (g) 17 Langmead House, 6 Sleaford House, Flat 122 Knapp Road, Flat 2 Southcott House, 10 Bowden House, 36 and 37 Birchdown House – the leaseholders say that the project is for the benefit of the Applicant – this is denied given that the costs are passed on to the leaseholders;
 - (h) 5 Couzens House- the leaseholder asks for time to seek legal advice but filed no further statement;
 - (i) 36 Limscoth House- the leaseholder seeks an adjournment to end February 2017 but the Applicant points out that the electricity contract expires in March 2017.
20. Mr Chowdhury of Flat 21, Southcott House E3 set out his opposition to the application in two statements. A summary of this challenges and the Applicant's response are set out below;
- (a) Mr Chowdhury raises various issues in relation to the cost of communal electricity for 15/16. The Applicant says that this is not a matter for the present application and points out that it is unhelpful to compare blocks as their consumption can differ. Mr Bhuta does however provide some comparison charges for what he says are similar blocks which show the charges are in line.
 - (b) The Applicant points out that Mr Chowdhury himself is on a fixed price tariff until 31 August 2017 and points out that this is similar to what the Applicant is trying to do in relation to the communal gas and electricity.
 - (c) Mr Chowdhury says that he did not believe that they were being charged in accordance with a specific unit rate. The Applicant says this is incorrect and that charges are made in accordance with the unit prices applied to the specific supply by the supplier. It is pointed out that the unit rates applied may differ between blocks by reference to the amount used, the time of day most is consumed and the type of meter.

(d) Mr Chowdhury also says that of the application is granted the leaseholders will not know the exact unit rate they are charged nor what the contract is. The Applicant says that this is incorrect as it has already indicated it is willing to publish on its website the average rate secured and the length of contract.

21. In his first statement Mr Chowdhury also raised numerous issues in relation to the service of various correspondence. None of that correspondence is relevant to this application and the tribunal comments no further.

The Tribunal's decision

22. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to two specific contracts entered into within a 12 month period from the date of the decision, namely the gas supply contract expiring on 30 September 2017 and the electricity supply contract expiring on 31 March 2017.

Reasons for the Tribunal's decision

23. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
24. The application was not opposed by the majority of the leaseholders.
25. The tribunal is satisfied that the Respondents will not be prejudiced by the grant of dispensation.
26. The application seeks dispensation from consultation to allow it to enter into fixed price tariffs. This process is one which is now common place and used routinely to allow landlords to obtain the best rates for their leaseholders. Such an approach is reasonable given that the cost of gas and electricity can fluctuate wildly in today's market. The Applicant is unable to consult leaseholder properly as the suppliers will not keep offers open long enough to allow such consultation to take place.
27. Although some leaseholders raised issues in relation to the past charges for communal electricity the tribunal did not consider these to be relevant to the decision it had to make. The dispensation granted will allow the Applicant to fix the rates to be applied to its stock in relation to both gas and electricity consumption.
28. The tribunal was satisfied with the responses given by Mr Bhuta to the challenges raised by Mr Chowdhury. It notes that the Applicant has

confirmed it is willing to provide Mr Chowdhury with the precise unit rates secured in respect of his building. In such circumstances the tribunal does not order the publication of the contract generally to all leaseholders as it accepts that to do so would be at huge administrative costs and may impact on the market.

29. The parties should be aware that this decision does not concern the issue of whether the service charge costs are reasonable and payable and those costs may be the subject of a challenge under section 27A of the Landlord and Tenant Act 1985.

Application under s.20C

30. Having regard to the tribunal's decision the tribunal did not consider it appropriate that an order under section 20C should be made.

Name: S O'Sullivan

Date: 9 February 2017