On Behalf of: The Applicant

Name of Witness Statement: Leor Klier

First Witness Statement

22nd November 2019

In the First Tier Tribunal

Property Chamber

(Residential Property)

**BETWEEN**

ORIGIN HOUSING LIMITED

(Applicant)

and

VARIOUS LEASEHOLDERS

(Respondents)

**WITNESS STATEMENT OF LEOR KLIER**

I, **LEOR KLIER**, of Origin Housing Limited, St Richards House, 110 Eversholt Street, London NW1 1BS, **SAY AS FOLLOWS**:

1 I am the Lease Analyst at Origin Housing Limited (“Origin”) and am duly authorised to make this Statement on behalf of the Applicant.

2 The Applicant is a Registered Social Landlord and is an exempt charity, registered in England & Wales as a registered society under the Co-operative and Community Benefit Societies Act 2014 (Registered No. 10008R) and with the Homes & Communities Agency (Registered No. L0871).

3 I make this statement in connection with the Applicant’s Application for the Dispensation of All or Any of the Consultation Requirements Provided for by Section 20 of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) with respect to the Applicant’s proposal to:-

3.1 create;

3.2 enter into; and

3.3 carry out a mini-competition call off (“Call Off”) under:

a Public Contracts Regulations 2015 compliant framework for utility supplies in order to obtain tariffs for gas and electricity supplies across a substantial portion of the Applicant’s property stock.

4 The facts and matters contained in this Statement are within my own knowledge (unless stated to the contrary), and I believe them to be true. Where I refer to information supplied by others, the source of such information is identified and facts and matters derived from these sources are true to the best of my knowledge and belief. Where I refer to ‘days’, unless stated to the contrary, these are calendar days.

5 There is now produced and shown to me a paginated bundle of true copy documents marked ‘LK1’ to ‘LK11’. References to documents in this Statement (unless stated to the contrary) are to these exhibited documents.

6 The Applicant is the freeholder, or has a headlease, of 621 buildings, which comprise approximately 6,700 residential units. The majority of these residential units are in London, although there are also residential units in Hertfordshire, Bedfordshire and Cambridgeshire. Overwhelmingly, these residential units are contained within buildings which contain common parts in which the Applicant is responsible for (amongst other things) lighting, lifts, alarms, and other systems which use electricity. Furthermore, many of the Applicant’s residential blocks contain communal gas fed boilers which supply hot water and heat (via central heating) to the entire block.

7 I exhibit at LK1 a schedule listing all the Respondents. Of the Respondents, there are approximately 1,000 shared owners, 400 leaseholders, and 5,000 tenants (a combination of market rents, intermediate rents, secure tenants, and various other tenancies) many of whom contribute via their service charges towards communal utility costs. In several thousand cases, the Applicant bears the cost of the utility supply and does not pass this on to tenants. In several hundred cases, the Valuation Office Agency has set upper limits for utilities which limit the amount the Applicant may seek to recover from secure tenants, and any charges in excess of such limits are borne entirely by the Applicant.

8 I exhibit the following sample documents:-

8.1 LK2:Shared Ownership Lease (DELETED).

8.2 LK3:Lease (DELETED).

8.3 LK4: Market Rent Tenancy AST (DELETED).

8.4 LK5: Intermediate Rent Tenancy AST (DELETED).

8.5 LK6: Secure Tenancy (DELETED).

Exhibits LK2, LK3, LK4, LK5 & LK6 were selected by a random number generator which selected a row from the Schedule at LK1. The Applicant can provide additional leases / agreements upon request.

Some of these documents refer to Griffin Housing Association Limited and St Pancras Housing Association Limited. The Applicant is the successor company to these and I exhibit at LK7 documentation confirming this.

9 Historically, the Applicant has entered into utility supply contracts on an annual basis. The Applicant has recently undertaken a review of its energy supply in consultation with a firm of specialist energy advisors, Cost Advice Services Limited of Church View, Clay Cross, Chesterfield S45 9HA (“Cost Advice”). Cost Advice specialise in advising public sector organisations on their utility procurement strategy. Cost Advice have been advising the Applicant for 14 years in connection with the Applicant’s utility supplies generally. In consultation with Cost Advice, the Applicant considered existing Frameworks (such as that operated by the Crown Commercial Services) but concluded that by creating its own framework, the Applicant would benefit from having:-

9.1 a bespoke framework tailored to its specific circumstances; and

9.2 continuing advice and support from Cost Advice;

which would not be available if the Applicant were to go down the CCS route.

10 The energy market is highly volatile and tariffs are subject to variations based on a number of factors most notable of which would be global demand, seasonal variations, currency movements and geo-political events. As such it is very difficult to foresee the costs which the Applicant may be required to pay for bulk energy supply for the periods 2020-21, 2021-22 and 2022-23. The Applicant does not possess any significant corporate knowledge with respect to energy markets and as such has, again, engaged Cost Advice to assist in this respect. Cost Advice advise that the most reliable data which can be used to determine likely future costs of utility supplies are historical trends. Cost Advice have prepared a spreadsheet which is exhibited at LK8 detailing the average tariffs across the Applicant’s residential stock obtained over the period 2011 to 2019. This spreadsheet shows that on the basis that the contract is worth £5,000,000.00 over 3 years:-

10.1 for electricity which constitutes approximately 70% of the energy mix:

10.1.1 The increase in the cost over this 8 year period is 32%, which equates to an annual compound increase of 3.55%. Using the Applicant’s 2019/20 utility costs as a guide, and extrapolating forward based on the historic average annual increase, by fixing the tariff over a 3 year period, this would lead to a saving of £82,833.33.

10.1.2 The average saving over the 8 year period which could have been obtained by entering into a contract of more than 1 year as opposed to 1 year is 1%. Over the lifetime of the proposed 3 year contract, using this historic guide, this would lead to a saving of £35,000.00.

10.2 for gas which constitutes approximately 30% of the energy mix:

10.2.1 The decrease in the cost over this 8 year period is 5.5%, which equates to an annual compound decrease of 0.65%. Using the Applicant’s 2019/20 utility costs as a guide, and extrapolating forward based on the historic average annual decrease, by fixing the tariff over a 3 year period, this would lead to an increase in cost of £6,500.00.

10.2.2 There is no difference over the 8 year period by entering into a contract of more than 1 year as opposed to a contract of 1 year.

Based on 10.1 and 10.2, by entering into a 3 year contract for the Applicant’s combined electricity and gas, as opposed to 3 separate 1 year contracts, the data indicates potential savings of £111,333.33, with such savings being passed on to the Respondents.

In addition, the Applicant believes that if gas and electricity are purchased together under one contract as opposed to separately, there will be administrative cost and staff time savings, although the Applicant is unable to quantify these.

11 The Applicant estimates the value of a 3 year contract for the supply of gas and electricity across its entire stock will be approximately £5,000,000.00 (which as stated above, splits approximately 70% electricity and 30% gas). This equates to approximately £248.76 per residential unit, although there will be variance due to:-

11.1 whether the Applicant is responsible for the internal utility supply to an individual residential unit; and

11.2 factors specific to buildings such as (amongst others) thermal efficiency, size, amount of lighting, lifts, heating levels (retirement schemes tend to be maintained at higher temperatures) etc.

In many cases, the cost will exceed the £100.00 threshold above which the Applicant would be required to carry out a consultation with residents in accordance with Section 20 of the 1985 Act.

12 On 18th November 2019, in accordance with the Public Contracts Regulations 2015, the Applicant dispatched an advertisement for the proposed Framework which was then published in the Official Journal of the European Union (OJEU) and invited tenders from utility suppliers across the European Union. The Advertisement, as well as the Invitation to Tender (“ITT”) and Draft Framework Agreement which will be supplied to utility suppliers who respond is exhibited at LK9, and the Applicant has posted the existence of, and a link to, the Advertisement on its website.

13 All utility suppliers who respond to the tender will be required to complete the ITT which aims to establish that the utility suppliers meet various minimum requirements so as to satisfy the Applicant that they should be invited to become a framework supplier. This is done on the basis of pass / fail criteria. Details of these pass / fail criteria can be found in LK9. The nature of the pass / fail criteria are issues such as:-

13.1 business critical matters which would make it impossible for a party to carry out their obligations under the contract (for example, we would exclude a Utility Provider who did not have all the required regulatory licences from OFGEM);

13.2 indicators of a history of behaviour on the part of the utility supplier which indicates that they are suitable partners (for example, evidence of compliance with tax obligations);

Those utility suppliers who are rejected will have a period of 10 days in which to object to their rejection. The Applicant will consider such objections, before making a final decision as to whether to invite the rejected tenderer to participate in the framework.

14 All utility suppliers who clear the pass / fail criteria will be invited to participate in the framework as “Framework Suppliers”.

15 The Applicant will subsequently carry out Call Offs under the Framework. The Applicant will issue an Invitation to Quote (“ITQ”) to the Framework Suppliers and the ITQ (a draft of which is at Annex 1 to the draft Framework Agreement at LK9) will require Framework Suppliers to respond:-

15.1 on a variety of quality criteria (such as giving details of past performance) in order to establish each Framework Supplier’s competence in carrying out their obligations in connection with energy supply and more specifically, ancillary matters related to energy supply such as customer service, repair response times etc. These quality criteria will enable the Applicant (in consultation with Cost Advice) to give the Framework Suppliers a “Competency Score” out of 20.

15.2 with competitive tariffs for the supply of gas and electricity. The Applicant will consider the tariffs provided and decide whether to proceed to select a tariff from those provided, or alternatively to reject all tariffs with a view to carrying out a further Call Off at a later date. Upon receipt of tariffs the Applicant considers appropriate, such tariffs will be given a “Cost Score” using the formula:-

Cost Score = 80 x (Lowest Tariff ÷ Tendered Tariff)

So, for example (and keeping the numbers small and simple for illustrative purposes), if 4 tenders were, £1.00, £2.00, £5.00 and £10.00, these would be scored 80, 40, 16 and 8 respectively.

16 The Competency Score and the Cost Score will be added together to give a “Final Score”. The contract will be awarded to the Framework Supplier who achieves the highest Final Score. The Applicant contends that in Utility Contracts, a 20:80 split between competence and cost is a good indicator of value for money.

17 Cost Advice advise that the nature of Call Offs in utility frameworks is that:-

17.1 the Applicant will issue ITQs to the Framework Suppliers;

17.2 the Framework Suppliers will have 5 working days to respond with:

17.2.1 competency answers; and

17.2.2 tariffs which reflect the Framework Supplier’s view on that particular day of the market over the lifetime of the contract;

17.3 the Applicant must then, within 1 working day, either reject all responses or enter into a contract with the Framework Supplier who achieved the highest Final Score.

As such, given that the Applicant will only have 1 working day in which to accept the tariffs, it is impossible to carry out any consultation with the Respondents on such proposed tariffs, as by the time such consultation has been carried out, the tendered tariffs will no longer be available. Cost Advice advise that in the event that tariffs were sought which the Framework Suppliers would be required to hold for a period sufficient to carry out a Section 20 compliant consultation, the Framework Suppliers would either not respond at all, or apply an uplift of up to 30% on their tendered tariffs. It is for this reason that the Applicant seeks dispensation. In short, by complying with the requirements of the Section 20 consultation process, the Applicant will be prevented from obtaining the lowest tariffs for itself, and by extension, the Respondents.

18 On or around 19th September 2019, the Applicant sent out a letter (the template for which is at Exhibit LK10) to the Respondents detailing the proposed contract, and the Applicant’s reasoning for seeking dispensation. In addition to this, the Applicant invited comments from the Respondents on the proposed contract. I received approximately 250 telephone calls seeking clarification, and several written observations. The written observations received fell into 3 broad categories:-

18.1 Requests for clarification of the substantive portions of the letter, or clarification as to whether the person’s personal supply within their home would be affected by this contract.

18.2 Requests in which the person had interpreted the line ‘*A QLTA is an agreement lasting more than one year which might require you to contribute more than £100.00 in any given year*’ as a request by the Applicant for payment of £100.00. Clearly this is not the case, and this was explained to the person.

18.3 Comments which would properly qualify as observations. These have been summarised and anonymously posted on the Applicant’s website.

I exhibit at LK11 copies of those items detailed at 18.3 (with names and contact details redacted). If required, I can also provide copies of those items listed at 18.1 and 18.2, although these have no bearing on the Framework.

19 The Applicant contends that dispensation is both desirable and essential. Broadly, the purpose of the Section 20 consultation process is to do 2 things which I will outline in more detail below, and these are:-

19.1 The Notice of Intention, the purpose of which is mainly to:-

19.1.1 advise the Respondents of the nature and requirement for the proposed contract. The Applicant has done this in the letter at LK10.

19.1.2 invite observations. Again, the Applicant has done this in the letter at LK10.

19.1.3 invite nominations for alternate contractors. This is an OJEU contract requiring advertisement. The Applicant advised the Respondents in the letter at LK10 that should they wish they may advise any third party of the existence of the tender and that anyone can apply.

Some contracts the Applicant may enter into such as grounds maintenance undoubtedly benefit from consultation with respondents. For example, respondents may request that grass is mown more or less frequently, or more trees planted. The nature of utilities is that input from the Respondents does not alter the fundamental nature of a utilities contract. Additionally, utilities are an absolute necessity to the proper functioning of the various buildings. There are buildings and they need to be supplied with both gas and electricity, otherwise, put simply, the heating will not work and the lights will not work. The Applicant sees no reasonable objection to the requirement for the Applicant to procure a utility contract.

19.2 The Notice of Estimates, the purpose of which is:-

19.1.2 To advise of the costs, or where non-determinable as is the case with utilities where cost is based on consumption which cannot definitively be ascertained in advance (although historical usage is a useful guide), the method by which the cost will be determined. In this case the tariffs, which when multiplied by the consumption give the cost. As previously stated, the tariffs are not available until a Call Off is carried out.

19.1.3 To establish that value for money is being obtained. The Applicant submits that the procedure outlined in paragraphs 13 – 16 above achieves this. The Applicant further submits that carrying out a consultation with the Respondents on the tariffs adversely affects the Respondents since it would likely lead to an increase in the costs they would be liable for. This defeats one of, and indeed, perhaps the primary purpose of, the Section 20 consultation procedure.

20 The Applicant believes that dispensation in this case does not materially or negatively impact the Respondents. Indeed, based on the information provided by Cost Advice, the ability to enter into a 3 year contract as opposed to a 1 year contract positively impacts the Respondents since our, and consequently their, utility costs will be lower.

21 In light of the above, I respectfully request that the Tribunal makes an Order dispensing with the Section 20 consultation requirements so as to enable the Applicant to purchase its utility supplies via Call Offs under the proposed framework.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

LEOR KLIER

22nd November 2019