

Committee(s): Barbican Estate Residents Consultation Committee – For Information	Dated: 2 September 2024
Barbican Residential Committee – For Information	16 September 2024
Subject: Temporary Workers	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	N/A
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain’s Department?	N/A
Report of: Judith Finlay, Executive Director of Community and Children’s Services	For Information
Report author: Daniel Sanders – Assistant Director – Barbican	

Summary

The City of London engaged in a temporary workers contract with Hays (“the Hays Agreement”) over a five-year period starting in 2017 without consulting affected long leaseholders under Section 20 of the Landlord and Tenant Act 1985

Recommendations

Members are asked to:

- Note the report.

Main Report

When the City became aware of the failure to consult affected long leaseholders it applied to the First-tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) for retrospective dispensation in relation to the use of the Hays Agreement on the Barbican Estate. That application was withdrawn shortly after to combine the application with the HRA Estates who had the same consultation requirements for their leaseholders.

In the intervening period, a leaseholder on the Barbican Estate (referred to in this paper as “the Applicant”) made a separate Tribunal application challenging not only

the recoverability of the costs over the £100 per annum statutory cap the absence of consultation imposes, but also the reasonableness and legal recoverability of various charges incurred under the contract. The City therefore delayed making its combined dispensation application until the Tribunal heard the Applicant's case and made a determination.

Tribunal Decision

Both parties entered their evidence and supporting statements to the Tribunal in advance, and the Tribunal held a one-day hearing on 15 July 2024 which was attended by the Applicant and officers from the City of London.

Various aspects of the Tribunal's decision are summarised below:

- Consultation

"The [City] accepts that the Hayes contract is a QLTA [Qualifying Long Term Agreement] and that the requisite statutory consultation was not undertaken. Consequently the sum that can be recovered from ██████████ in respect of the Hayes (sic) contract for the years 2017-2018 to 2023-2024 is capped at £700."

- Reasonableness and Recoverability

1. Lobby Porters

Recoverability under the lease – para 30 – *"...the cost of engaging temporary porters via the Hayes (sic) contract is recoverable..."*

Reasonableness – para 34 – *"...the cost of engaging agency staff to cover for 4 members of the porter staff who were permitted to stay at home from March 2020 to September 2020 was...reasonably incurred..."*

2. Cleaners

Recoverability under the lease – *"...the cost of daily rubbish collection is a chargeable cost under Paragraph 5 of Part VI of Schedule 5 to the applicant's lease..."*

Reasonableness – para 49 – *"There is in our view no evidence to show that the sums spent on cleaning overall, or the sums spent on temporary staff from 2017-2018 to 2022-2023 were unreasonable in amount."*

Reasonableness - para 50 – *"We do not consider that the sums spent on cleaning in 2020-2021 were unreasonable in amount."*

Reasonableness - para 51 – *"In our view based on the available evidence a reasonable amount [for an estimated sum spent of agency cleaners in 2023/2024] would be £300,000 [not £472,337]."*

3. Communications officer

Recoverability under the lease – para 44 – “...*cost of the same was recoverable...under the lease...*”

Reasonableness – para 44 – “...*the cost of the same...was reasonably incurred...*”

4. Summary

The City accepted at the Tribunal that it did not consult affected long leaseholders prior to entering into the Hays Agreement under S20 of the Landlord and Tenant Act 1985 and the Tribunal has declared that the amount of relevant service charge is capped at £100 per annum for the applicant.

The Tribunal has declared, based on the evidence presented, that the costs set out above which were incurred under the Hays Agreement were incurred reasonably and are recoverable from the Applicant under the terms of the lease agreement.

The Tribunal noted that estimated cleaning costs for 23/24 seemed high in comparison to prior years and declared that £300,000 is a reasonable amount for those 23/24 estimated cleaning costs against the City's unreconciled estimated expenditure of £472,337.

Retrospective Dispensation Application – the 2017 Hays Agreement

Having now received the Tribunal decision in relation to the Applicant, it is the intention of the City to submit a retrospective dispensation application to permit recoverability of the amount over and above the statutory £100 cap. The primary reasons the City believes this is a justified course of action are:

- The leaseholders were the beneficiary of the service(s) provided under the Hays Agreement
- The City can demonstrate the usage of the Hays Agreement did not cause any significant financial prejudice its leaseholders
- The tribunal has already determined costs (with exception to the 23/24 cleaning costs) were incurred reasonably and in line with the lease agreements

Prospective Dispensation Application – the 2025 temporary worker contract

The City also intends to apply for prospective dispensation for the next temporary workers agreement commencing in 2025. The reason for this is the fact the City will be using a Framework agreement and it is not possible in the circumstances to

reconcile the requirements of the service charge consultation regulations with the nature of the proposed Framework procurement.

To provide assurances to leaseholders that we are still committed to meaningful consultation, we issued a stage 1 S20 Notice of Intention for the 2025 agreement and invited written observations. We received a total of 3 observations from leaseholders and they have all been responded to (noting 1 has come back and is owed a further response). A detailed explanation of the City's reasons for not being able to properly consult leaseholders was set out in the Notice of Intention.

Local Management

We are committed to ensuring we only draw down on the 2025 temporary labour contract as a last resort. The utilisation of temporary labour should not be a prominent feature of our staffing strategy.

As defined in my covering note accompanying the S20 notice the BEO gives the following commitments with relation to its usage of temporary workers under the 2025 agreement.

- Temporary labour will primarily be used as an exception for absence management and where possible and practical the BEO seeks to employ people on permanent/fixed term contract basis to ensure continuity of service and long-term security of the workforce.
- Have a series of local standard operating procedures defining the parameters of management for which the BEO will use temporary workforce under the new contract made available for review prior to the commencement of the 2025 contract.
- A quarterly report, defining the usage of agency and associated cost is presented at RCC and BRC meetings to clearly allow visibility of our operational and financial use of agency staff under the contract.
- Ensure that, through the entire period of the contract any nominations for new temporary workforce providers are properly and fairly considered, and if appropriate, added as a supplier under the global contract.

Conclusion

The City will be making their retrospective and prospective dispensation applications for the 2017 and 2025 temporary workers contracts as soon as possible. We hope this report provides confidence that we are doing this in a considered and reasonable fashion.

Report of Daniel Sanders

Daniel Sanders

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