



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

Case Reference : **LON/00AW/LDC/2019/0201**

Property : **Flats 1-16, 65 Ladbroke Grove
London W11 2PD**

Applicant : **Wood Management Trustees Ltd.**

Representative : **Residential Management
Group Ltd**

Respondents : **Leaseholders of the flats at the
Property.**

Representative : **None**

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **Mr. N. Martindale FRICS
Miss. M. Krisko FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 December 2019**

DECISION

Decision

- 1. The Tribunal grants dispensation from the requirements on the Applicant to consult the Respondents under S.20ZA of the Landlord and Tenant Act 1985, in respect of the application.**

Background

2. The applicant, Wood Management Trustees Ltd., has through its representative Residential Management Group Ltd applied to the Tribunal under S.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S.20 of the Act.
3. The application was dated 12 November 2019. The proposal was that a contract for provision of two replacement boilers to the Property’s communal heating system be entered into for works to commence immediately, but without consultation of leaseholders. None of the work had, at that date, started.

Directions

4. Directions dated 26 November 2019 were issued by Tribunal Chair Aileen Hamilton-Farey without any oral hearing. They provided for the Tribunal to determine the application during the week commencing 16 December 2019 and that if an oral hearing were requested by a party, it take place on 18 December 2019. It was not requested.
5. They further provided that the applicant must by 3 December 2019, send to each leaseholder copies of the application and directions whilst displaying a copy of same in a prominent position in the common parts of the property. Confirmation to the Tribunal, of compliance by the applicant, was required by 6 December 2019.
6. Any leaseholders who opposed the application had, until 10 December 2019 to notify the Tribunal with any statement and supporting documentation.

Applicant’s Case

7. The Property is described as “...a residential block of purpose built flats. The property Grade 2 listed building with 15 flats on 4 floors including a penthouse. There are 5 garages underneath.” There being no evidence to the contrary, the Tribunal assumed that all the residential leases are in essentially the same form.

8. The application stated further in box 7 that the “Dispensation Sought” concerned “qualifying works”, being a contract where individual contributions would be sought in excess of £250 from each leaseholder.
9. The dispensation sought could be dealt with on paper as at box 9 and otherwise on ‘fast track’, box 10.
10. On page 8 of the Application and under “Grounds for Seeking Dispensation” the Applicant stated that: *“There are two boilers within the building used in common with the tenants, unfortunately one has broken down and the second remaining boiler will not last the winter given the age and condition of the boiler, notwithstanding the strain it will be put under supplying to the entire building. Decisions with the maintenance engineers – Contract Energy Management (CEM) and the environmental engineering partnership (EEP) have determined that the best way forward is to replace both boilers, parts for the boilers are no longer available due to the age and design.”*
11. And *“...It is clear that the only sensible way is to replace both boilers and the associated plant such as the flue extraction system and the calorifier.”* Although *“...The calorifer (hot water storage unit) needs to be replaced... the actual replacement can be delayed until the summer of 2020 if funds are not available.”*
12. *“The need for the works has been identified in two separate surveys and reports, and endorsed by (EEP) and (CEM). The two companies have also provided a price proposal to their findings, the Applicant is to proceed with the lowest quote. The Applicant is at the same time holding discussions with the chair of the residents committee and their informal resident committee members regarding the replacement of the boiler.”*
13. The applicant confirmed that all leaseholders had been notified of the application to the Tribunal.
14. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

Respondents’ Case

15. Of the Respondent leaseholders the Tribunal did not receive any written responses, either in favour or against any aspect of the application for dispensation.

Law

16. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable

for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works or where a contract is for a period in excess of 12 months. In such cases where timely consultation is inadequate or non-existent, only £250 or £100 respectively can be recovered from a tenant in respect of such works or long term contracts unless the consultation requirements have either been complied with or dispensed with.

17. Dispensation is dealt with by S.20 ZA of the Act which provides:-
“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 consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure
(e) specify-
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the period on which the relevant period ends.

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

**(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Determination

19. The scheme of the provisions is designed to protect the interests of tenants. Whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
20. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
21. This application is for dispensation from consultation of leaseholders over the selection and appointment of a contractor to the landlord for provision of replacement a communal heating system to the Property. The applicant complied with the Tribunal directions and the Tribunal received no response for or against the proposal.
22. On this basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation

Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with on this occasion.

- 24. It should be noted that in making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**
- 25. Such costs may be the subject of a separate challenge in a subsequent application brought by a leaseholder at a later date under S.27A of the Landlord and Tenant Act 1985.**

N Martindale FRICS

18 December 2019