

LON/00AU/LDC/2006/0086

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**ON AN APPLICATION UNDER SECTION 20ZA OF THE**  
**LANDLORD AND TENANT ACT 1985 as amended**

**Premises:** Bevin Court, Cruickshank Road, London, WC1X 9HA

**Applicant:** London Borough of Islington

**Respondent:** All Long Leaseholders of Bevin Court

**Appearances:** **For the applicant**  
Mr. Piers Harrison – Counsel  
Mr. Steve Inskip – Principal Litigation Lawyer  
Mr. Michael Barkway – Group Leader (Mechanical)  
Miss Karen Kennedy - Senior Major Works Officer

**For the Respondent**  
Did not attend

**Date of Hearing:** 11 January 2007

**Date of the Tribunal's Decision:** 19 January 2007

**Tribunal:** Mrs B M Hindley LLB  
Mr M Cairns MCIEH  
Mr A D Ring

1. This is an application, dated 9 November 2006, made under Section 20ZA of the Landlord and Tenant Act 1985 by the London Borough of Islington, for a determination to dispense with the statutory consultation procedures in respect of the replacement of two boilers at Bevin Court.
2. In the application the applicants stated that the grounds on which the dispensation was sought were that there were two heating boilers installed in the subject property, together with one domestic hot water boiler. At the beginning of September 2006 it was noted that the two heating boilers had developed leaks and needed to be replaced. Work had commenced immediately to replace one boiler since the situation was seen as an emergency and to have delayed would have meant carrying out the work at the coldest time of the year. Letters were, therefore, sent to the leaseholders on 30 October 2006 informing them of the need to commence work without consultation.
3. Prior to the hearing the applicants had provided the Tribunal with paginated bundles of documents to which Mr Harrison, in the course of his opening remarks, referred the Tribunal.
4. Mr Harrison confirmed that leaks had been discovered in September 2006 which required the two boilers either to be repaired or replaced without waiting the, at least, 60 day period which the statutory consultation would have taken.
5. He identified from one of the leases that the applicants, as landlords, were under a duty periodically to inspect, maintain, overhaul, repair and, where necessary, replace the whole or any part of the heating and domestic hot water system. He confirmed that the leases of all 31 of the total of 118 flats in the block whilst not identical were substantially similar.
6. He drew to the Tribunal's attention to letters dated 2 November 2006 sent to all leaseholders by Karyn Kennedy, a Senior Major Works Officer in Home Ownership Services.
7. The letters explained that both heating boilers had developed leaks 'and cannot be operated' and that their replacement was viewed as an emergency situation because, despite the existence of a third boiler, with a lesser output (300 KW as opposed to 500KW) for the supply of hot water, it was necessary for the two boilers to be operational in order to meet the building's heating load before the coldest part of the year.
8. Somewhat confusingly the second paragraph of the letter went on to mention that 'the replacement boiler sections have to be obtained from Turkey' and that, in the past, this had 'usually taken two months'. This delay was given as the reason for an application which was to be made under Section 20ZA. Leaseholders were invited to respond with any observations to the writer.
9. A Directions hearing took place on 13 November 2006 and consequent on the Directions copies of the applications form and grounds for seeking dispensation, an estimate of the total cost of the qualifying works to be charged to the service charge account and a copy of the Directions were all to be sent to the leaseholders by 24 November 2006.
10. The required letter, signed by Steve Inskip, Principal Litigation Lawyer, and accompanying documentation was sent on 24 November. Leaseholders were informed that the total cost of the works would be £51,060 and their individual share was also given. Three letters from Engineering Maintenance Services Ltd (the chosen contractors) were also included to show how the costs were

calculated. The first, dated 12 September 2006, specified that the work included removing one boiler, installing a new boiler in its place and keeping parts of the removed boiler with a view to repairing the second boiler. The second letter, dated 21 November, gave the cost of works in connection with necessary valve work and the third, also dated 21 November, gave the costs for delivering and installing another boiler.

11. Responses to this letter were invited and Mr Harrison produced a copy of the only one received – from the leaseholder of Flat 34. He enquired why the work was ‘suddenly urgent when there have been obvious on going problems with the system over the past years’.
12. Mr Harrison then directed the Tribunal’s attention to the witness statement of Mr Michael Barkway, a Group Leader (Mechanical) employed by Homes for Islington, an organisation owned by the Council but operating at arms length from it.
13. In his statement, dated 13 December 2006, Mr Barkway explained that, following a periodical inspection by one of their maintenance contractors, leaks had been discovered in the two heating boilers. These leaks had been reported to the Maintenance Section in ‘mid September’ 2006 and there were then two options – repair or renewal. Because the Maintenance Section knew that replacement parts would take two months to arrive from Turkey (where the boilers were manufactured) the decision was taken to renew them.
14. Mr Barkway wrote that because there was a chance that there could be no heating at the coldest time of the year a decision was taken to renew one boiler immediately and to repair the second boiler with parts salvaged from the first.
15. He explained that two companies were contacted to supply estimates for the work. Engineering Maintenance Services Ltd replied immediately but the other, R.W. Edwards Ltd, supplied only an invoice which related to similar works which they had carried out on another estate, also managed by Homes for Islington. Because Engineering Maintenance Services Ltd were able to start work immediately and because the comparable invoice was £2000 more, the contract was awarded to Engineering Maintenance Services Ltd. Work commenced towards the end of September and was completed within a few days.
16. With one boiler installed and working a decision was taken not to replace the second boiler until the application for dispensation was made on 9 November.
17. An estimate for the replacement of the second boiler was obtained from Engineering Maintenance Services Ltd on 21 November, together with an estimate relating to required works to the control valves.
18. Mr Barkway ended his statement by saying that works to the second boiler had started and ‘hopefully’ would be completed by the date of the hearing.
19. Mr Harrison handed in a second statement made by Mr Barkway, dated 2 January 2006. In it he clarified that, in fact, he had contacted R. W. Edwards Ltd first and only when they had not been able to commence work immediately had he contacted Engineering Maintenance Services Ltd.
20. Mr Harrison then called Mr Barkway to give evidence. In response to questions from the Tribunal he said that the boilers, which were only some five years old, had been subject to a maintenance contract which provided for bi annual inspections. He acknowledged that there had been problems in different parts of the system with the result that the boilers had been identified,

- in October 2005, as in need of replacement and the work had been scheduled to take place before April 2007.
21. However, the discovery of the two simultaneous leaks during the course of the bi annual check towards the end of August 2006 had made the programmed works urgent. The situation had been discussed with the Maintenance Department and the options of repair or replacement considered. Repair had been ruled out because of the time scale involved in obtaining the necessary parts.
  22. One boiler had been replaced by Engineering Maintenance Services Ltd 'towards the end of September' and by the end of September it was apparent that the other boiler would also have to be replaced rather than repaired from the spare parts of the replaced boiler as originally planned.
  23. Mr Brayshaw explained that there was then consultation between the Area Housing Officer and Mr Inskip, the Principal Litigation Lawyer before consent was obtained for the work to proceed, although it emerged from further questioning that the present situation was that the second boiler had been removed but not yet replaced.
  24. Mr Brayshaw confirmed that it was usual to obtain four estimates for such work and that, even in respect of the second boiler he had not attempted to obtain any further estimates.
  25. Questioned by the Tribunal about the existence of preparatory work (e.g. initial notices, specification, tenders etc) for the apparently programmed replacement of the boilers before April 2007, Mr Brayshaw responded that resource problems in the office had prevented this happening. However, he said that the proposed time scale would have been the issuing of Section 20 notices in November or December 2006 with a view to the work commencing in January 2007.
  26. After a ten minute adjournment requested by Mr Harrison he made his final submissions. He claimed that the first boiler had to be replaced as a matter of urgency and that it would have been a breach of the landlord's obligations not to have carried out the work. With regard to the replacement of the second boiler he said that, with the benefit of hindsight, it was possible to claim that proper consultation could have taken place in November but since Engineering Maintenance Services Ltd had completed the work in relation to the first boiler satisfactorily it was convenient to allow them to continue to avoid further delay.
  27. The Tribunal was not persuaded that it was reasonable to dispense with the consultation requirements laid down by the Act. It emerged from the evidence that it had been known since October 2005 that the boilers were in need of replacement and that the work had been scheduled for completion by April 2007. Only resource problems had prevented the planned work being put in train. Moreover, it appeared that the work, as scheduled, was to have taken place in January which was precisely the time that the applicants stated, in their grounds of application, that they were seeking to avoid.
  28. Further, in the Tribunal's opinion, the leaseholders had been sent misleading letters in that the letter of 2 November 2006 indicated proposed replacement whilst giving as the reason for dispensing with consultation the delay in obtaining parts. In fact, at that date, one boiler had already been replaced and the decision had been taken to replace the second. The second letter of 24 November did nothing to rectify the misapprehensions caused by the letter of

