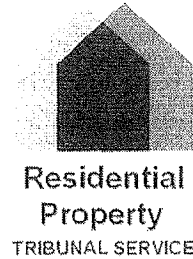


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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00AT/LDC/2012/0072**

**DECISION OF THE TRIBUNAL UNDER SECTION 20ZA OF THE  
LANDLORD AND TENANT ACT 1985**

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**Premises:** The Brentford Dock Estate comprising residential addresses 1-82 Galba Court, 1-88 Romulus Court, 1-90 Numa Court, 1-110 Otho Court, 1-64 Nero Court, 1-21 Leo Court, 1-33 Maurice Court, 1-21 Servious Court, 1-30 Julius Court, 1-15 Marcus Court, 3-38 Augustus Court (590 properties)

**Applicant:** Brentford Dock Ltd

**Represented by:** Michael Richards & Co, managing agents

**Respondent:** 590 leaseholders named in attached schedule

**Represented by:**

**Tribunal:** Martin Rodger QC, Neil Moloney FRICS

**Date of Hearing:** 20/09/12

**Date of Decision:** 20/09/12

# DECISION OF THE TRIBUNAL UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

## THE BRENTFORD DOCK ESTATE

### Parties

1. The Applicant is the lessor of the Brentford Dock Estate ("the Estate"), an estate of residential buildings comprising 590 individual leasehold properties. The Respondents are the long leasehold owners of the flats and other residential properties on the Estate.

### Application

2. The Applicant seeks an order under section 20ZA, Landlord and Tenant Act 1985 ("the 1985 Act"), dispensing with statutory consultation requirements in relation to estimated expenditure of £434,679.73 on the replacement of central heating boilers at the Estate.
3. Neither party requested that the application be dealt with at an oral hearing, and having considered the papers the Tribunal felt able to make a determination on the written material alone.

### Facts

4. The Estate is served by a communal central heating and hot water system located in a central boiler house containing three separate boilers. In 2011 the underground pipes forming part of the system were replaced at a cost of £1.8 million. Work was undertaken to repair the boilers but opening up of Boiler 1 disclosed more extensive damage than had been anticipated and caused the Applicant to seek further advice on the remedial action open to it.
5. On 13 March 2012 the Applicant was advised by RBW Galton FCIBSE, its consulting engineer, that he did not recommend that the proposed repairs be continued with. In a careful and detailed report Mr Galton explained his view that further expenditure on repairing the boilers would be a false economy and that they ought to be replaced. Mr Galton estimated that the cost of repair to boiler 1 would be in the order of £60,000 plus professional fees, and assumed that similar work would be required to the other boilers. He estimated the cost of replacing the equipment with new boilers would be in the order of £270,000-£280,000 plus professional fees of £42,000.
6. The Applicant acted promptly on receipt of Mr Galton's advice, accepted it and gave instructions to its agents, Michael Richards & Co, to initiate the statutory procedure for consulting the leaseholders required by section 20 of the 1985 Act. On 23 March 2012 the managing agents sent stage 1 consultation notices to all leaseholders informing them of the proposal to replace the boilers and inviting their observations on the proposed works and suggestions identifying contractors who might be invited to tender for the work.

7. The consultation notice was accompanied by a detailed letter explaining the proposal. The letter stated that the proposed work would be paid for from the block reserve funds built up in previous years, and no increase would be required to the service charges previously notified. It also informed leaseholders that they would have a further opportunity to comment when tenders had been received and before any contract for the works was awarded.
8. Only one substantive response was received to the initial consultation notice. On 21 April 2012 a series of detailed questions was raised by Mr D Williams. Amongst the matters which Mr Williams raised were questions regarding the cause of the deterioration of the boilers, a complaint that insufficient information had been provided, suggestions that the opportunity should be taken for a more thorough review of the heating requirements for the Estate, and that the local authority be approached for a grant, and a request for an assurance that the work was not required as a result of damage caused by the contractors who had replaced the underground piping the previous year.
9. The managing agents and Mr Galton both responded to the observations made by Mr Williams. The responses which the Tribunal has seen are undated and may have been sent by e-mail. They are detailed and constructive and offer to provide further information when it becomes available. The Tribunal does not know whether the responses answered Mr Williams's questions to his satisfaction but notes that neither he nor any other leaseholder has taken the opportunity to make representations to the Tribunal in response to the current application.
10. The managing agents received quotations from 6 manufacturers. Despite the assurance given to leaseholders that there would be further consultation on the tenders before any contract was entered into, the Applicant proceeded to order boilers, accessories and controls from one of the tenderers, Wolseley UK Ltd, on 27 June 2012. The value of the order was £114,948.
11. The explanation for the pre-emptive order for the boilers given by the Applicant is that it was advised that the boilers needed to be replaced during the summer, while no heating was required. In order to achieve this objective work had to be carried out during September, and the lead in time for the manufacture of the boilers required that the order be placed by the end of June. The decision to order the boilers necessarily meant that, in relation to that component of the project, the statutory consultation procedure could not be completed.
12. The current application to dispense with the full consultation requirement was commenced on 2 July 2012. On 17 July 2012 all leaseholders were informed that the order had been placed and that the application had been made. A copy of the Tribunal's directions explaining how leaseholders could participate in the application was provided along with other

documents including a copy of the advice received by the Applicant from Mr Galton on 13 March 2012.

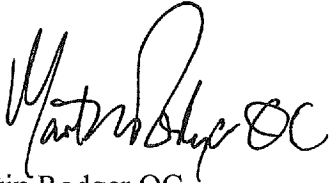
13. Despite having already placed the order for part of the work the managing agents continued with the statutory consultation procedure in relation to the remainder of the project. On 3 August 2012 all leaseholders were sent a second consultation notice providing details of proposed expenditure, totalling £480,279, a summary of the estimates received, and information on where they might view the tender themselves. The estimated cost of the work was subsequently corrected and reduced to £434,679 in a further notice sent to leaseholder on 7 August 2012.
14. None of the leaseholders has responded to the application.

**Decision and reasons**

15. The Tribunal has power to dispense with the statutory consultation requirements if it is satisfied that it is reasonable to do so.
16. In this case the Tribunal considers that it is reasonable to dispense with so much of the statutory consultation as has not been completed, for the following reasons:
  - (i) We accept the reasons given by the Applicant for ordering the boiler before consultation was complete, and the need for urgency in undertaking the work during September 2012.
  - (ii) We consider that the alternatives of either undertaking short term repairs while the consultation continued, or of leaving the Estate without adequate heating for a period, would have been unsatisfactory for all of the leaseholders.
  - (iii) We take into account that the procedure was begun and, so far as possible, continued with in a proper manner. The initial consultation notice provided an opportunity for any leaseholder who wished to comment on the principle of the work to do so, as Mr Williams' contribution on 21 April demonstrates.
  - (iv) We also take into account the absence of any objections to the application.
  - (v) The Applicant is owned by the leaseholders on the Estate. The alternative to dispensation would be that the Applicant would have to fund a significant part of the cost of the new boilers from its own resources which would ultimately be provided by the leaseholders in their capacity as shareholders in the company. We consider it more satisfactory for the cost of the boilers to be funded through the service charge, particularly as the Applicant's intention to fund the work from reserves ought to mean that leaseholders are not presented with an unexpected service charge demand.
17. Taking all of these considerations into account we are satisfied that it is reasonable to dispense with the consultation requirements in respect of the estimated expenditure of £434,679 on the replacement of the boilers at the Estate.

**Note**

18. This decision concerns only the application to dispense with consultation under section 20ZA of the 1985 Act. The Tribunal has made no decision on any other issue and nothing in this decision affects the right of any party to make a further application to the Tribunal under any other provision of the 1985 Act, whether concerning the reasonableness of the work done or the cost incurred or otherwise.

A handwritten signature in black ink, appearing to read 'Martin Rodger QC', written in a cursive style.

Martin Rodger QC  
20 September 2012