



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

Case Reference : **LON/00AG/LDC/2014/0080**

Property : **Flats at 52,54 and 58 Priory Road
London NW6 3RE
Flats at 1-6 St Mary's Mews NW6
3RF
Flats 1-6 at 269 Goldhurst Terrace
NW6 3EP**

Applicant : **London Borough of Camden**

Representative : **Insley Ettienne**

Respondent : **Leaseholders at Priory Road, St
Marys Mews and Goldhurst Terrace**

Representative :

Type of Application : **For the determination of the
granting of dispensation from the
Service Charges (Consultation
Requirements) (England)
Regulations pursuant to section
20ZA of the Landlord and Tenant
Act 1985**

Tribunal Members : **Judge P Leighton LLB
Mr C Gowman BSc MCIEH**

Venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **27th August 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines to grant dispensation from the requirements of the Service Charges(Consultation Requirements) Regulation 2003 in respect of the works to the boilers pipework and hot water systems to the above properties carried out between January and March 2014

The Background

- 1 The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") to grant dispensation from the provisions of Service Charges(Consultation Requirements) (England) 2003 in respect of the various properties at Priory Road , St. Mary's Mews and 269 Goldhurst Terrace London NW6
- 2 The relevant legal provisions are set out in the Appendix to this decision.

The hearing

- 3 The tribunal directed that the matter proceed by way of a paper determination and the Respondents did not object to this proposal
- 4 Written representations were received from the landlord including a statement from Mr John Stow the mechanical service manager within the housing and adult social care department of the London Borough of Camden and from various leaseholders who objected to the application.

The properties

- 5 The properties which are the subject of this application are blocks of flats served by a common heating and hot water system.
- 6 None of the parties requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
- 7 The Applicant is the freeholder of the properties and the respondents hold long leases which require the landlord to provide services including the provision of heating and hot water under Clause 2 of the Third Schedule to the leases and requiring the tenants to contribute towards their costs by way of a variable service charge.

The Facts

- 8 On 23rd December 2013 the London Borough of Camden's contract manager became aware that some of the residents of at 52 Priory road (Flats A to H) 54 Priory road (Flats A to F) , 58 Priory Road (flats A to

F) 1-6 St Mary's Mews , and 269 Goldhurst Terrace had no heating or hot water, so short term temporary measures were taken to ensure residents had heating and hot water over the seasonal period

- 9 Surveys were undertaken to trace where the pipework was located and excavations undertaken to expose the pipework within the gardens of 56 Priory road and Goldhurst Terrace and to the entrance to St. Mary's Mews. Damaged pipework was found in the gardens of Goldhurst Terrace.
- 10 Other works were to replace both communal boilers feeding hot and cold water to all flats within New Priory Court . there are two communal boilers that serve these properties. One boiler was defective due to having a number of split heat exchanger sections. The second boiler was deemed to be high risk with it being the same age as the first and possible faults occurring leaving the estate with no heating or hot water.
- 11 Owing to the type of boiler and flue configuration it was not possible to replace one boiler but both boilers had to be replaced at the same time . A decision to install a temporary boiler was made owing to these issues together with asbestos being found within the boiler house presenting health and safety issues.
- 12 Leaseholders were issued letters on 4th February 2014 and some discussion took place with residents, the letter outlined the nature of the intermittent and or loss of heating and hot water to the affected properties.
- 13 Following the issue of the application a number of objections were received substantially from residents of Goldhurst Terrace, some agreed to the dispensation. There was an objection from a leaseholder in Priory Road who objected to dispensation on the basis of the time taken to complete the works . Additionally dispensation should not be given as the leaseholder considered it essential that leaseholders were informed of monies spent.
- 14 Works were finally completed in March 2014 . Camden anticipate that each of the leaseholders will be charged over £1500 for the works. On 13th January 2014 the leaseholders of Goldhurst Terrace acquired the freehold of the block and an issue has arisen as to their potential liability for these costs which is not a matter for the tribunal to determine on this application.

The issues

- 15 The only issue which the tribunal is required to determine is whether it is reasonable in all the circumstances to grant dispensation from the requirements of the regulations under Section 20ZA of the 1985 Act.

The Tribunal's Decision

- 16 Having read the evidence and submissions from the parties and considered all of the documents provided, the tribunal has concluded that it would be reasonable to grant dispensation for the following reasons.
- 17 The works were urgently required in that notice of the leaks arose in December 2013 and emergency action was taken to ensure that the heating and hot water was reinstated over the Christmas period
- 18 The excavation work in January 2014 was carried out promptly and in the light of the findings the Applicant concluded on the advice of its technical officers that it was necessary to replace the boilers rather than repair them because the boilers were of such an age that it was impossible to obtain replacement parts. It was also necessary to remove the asbestos which could have become a danger to health if left
- 19 The Applicant sent out notices in March 2014 seeking the observations of leaseholders as to the necessity of the works although such consultation was inevitably limited having regard to the fact that Apollo were carrying out the works pursuant to a qualifying long term agreement.
- 20 The tribunal makes no findings as to the reasonableness of the cost of the works or the liability of the leaseholders in Goldsworth Terrace who had acquired the freehold in January 2014 which may be the subject of further litigation if the parties are unable to agree.

Name: Peter Leighton

Date: 27th August 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

(1) Where an application is made to the leasehold valuation tribunal (First Tier Tribunal Property Chamber) 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

(2) “Qualifying works” means works on a building or any other premises and “Qualifying long term agreement” means an agreement entered into by or on behalf of the landlord or a superior landlord for a term of more than 12 months.