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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LDC/2018/0067**
Property	:	**1 – 44 Bloomsbury House, Clarence Avenue, London SW4 8HZ**
Applicant	:	**London Borough of Lambeth**
Representative	:	**Homeownership Service of the Council**
Respondent	:	**The various leaseholders at the Property details of which are appended to the Application**
Representative	:	**Not known**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal member	:	**Tribunal Judge Dutton**
Date of decision	:	**6th June 2018**
	:	

DECISION

DECISION

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of works (as set out below)to 1 – 44 Bloomsbury House, Clarence Avenue, London SW4 8HZ (the Property) under the provisions of s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. The application states that the Applicant wished to carry out urgent works to replace two of the failing boilers at the Property as follows:

   - Isolate and decommission the existing faulty boilers
   - Supply and fit a replacements on the roof top location
   - Re-pipe and re-commission the boilers
   - Clear the site

3. I am told in an application dated 9th April 2018, that the two boilers had repeatedly broken down leaving the flats without heating. I am told that in a block of 44 flats, 8 are long leaseholders. A quote was obtained from T Brown Group, a qualifying long term contractor, in the sum of £25,792.07 plus VAT. This would appear to expose each leaseholder to a potential cost of £610.70 as set out in an Initial Notice sent to the leaseholders on 21st February 2018.

4. The weather deteriorated and in a witness statement of Gregory Brutton, an Enforcement Manager with the Council, I was told that the decision was taken to carry out the replacement works without completing the Section 20 procedure.

5. The works were started on 7th March 2018 and completed on 9th March 2018.

6. The residents were delivered with copies of the application, directions and questionnaire, a sample lease, a list of the Respondents and contract information, by Mr Brutton, who confirmed in his witness statement dated 16th May 2018, that this had been. It does not appear that there have been any dissenting voices.

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[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

7. The matter came before me for consideration as a paper determination on 6th June 2018.

8. I had available papers, which included the application, the directions, the quote referred to above and a copy of a specimen lease. In addition I was supplied with copies of the Respondents' details, a chronology of the boiler problems at the Property, a copy of the Initial Notice and Mr Brutton's statement, with exhibits. I have read these and taken them into account in reaching my decision

9. The only issue for me to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

10. I have considered the papers lodged. I am not aware of any objection raised by any of the leaseholders.

11. It appears from the papers that two heating boilers were not functioning properly and exposing the Residents to cold. It would seem that the boilers were not capable of being repaired. Clearly not a position which can remain. I am satisfied that it was necessary to carry out the replacement without undue delay.

12. The terms of the lease provide for the Respondent lessees to pay for certain works (see clauses 2.2) and for the Applicant to provide hot water (see clauses 3.2.3 and 3.4 and the 4th Schedule para 2).

13. I am satisfied that it is appropriate to dispense with the consultation requirements as set out in the Regulations[1]. My decision does not affect the right of any Respondent to challenge the costs should they so wish, it relates only to dispensation under the provisions of s20ZA of the Act.

Andrew Dutton

Tribunal Judge

Andrew Dutton 6th June 2018

The relevant law

Section 20 of the Act

(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) a leasehold valuation 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.

Consultation requirements: supplementary

Section 20ZA

Where an application is made to the appropriate 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.

In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or
in any circumstances so prescribed.
In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
Regulations under subsection (4) may in particular include provision requiring the landlord—
to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
to obtain estimates for proposed works or agreements,
to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
to give reasons in prescribed circumstances for carrying out works or entering into agreements.
Regulations under section 20 or this section—
may make provision generally or only in relation to specific cases, and
may make different provision for different purposes.
Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).