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**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00AW/LDC/2008/0001**

**AND IN THE MATTER OF OVINGTON COURT, LONDON SW17  
1LB**

**AND IN THE MATTER OF AN APPLICATION UNDER SECTION  
20ZA OF THE LANDLORD AND TENANT ACT 1985**

**BETWEEN**

**WALL PROPERTIES LIMITED**

**Applicant**

**-and-**

**THE LESSEES OF OVINGTON COURT,  
LONDON SW3 1L5**

**Respondents**

**THE TRIBUNAL'S DECISION**

**Paper determination: 26 February 2008**

**Tribunal: Professor J T Farrand QC LLD FCI Arb Solicitor  
Mr D D Banfield FRICS  
Mrs S O'Sullivan Solicitor**

1. The Application to the Tribunal under s.20ZA of the Landlord and Tenant Act 1985 (as amended) (the "Act"), dated 18 December 2007, sought dispensation from consultation requirements in respect of the replacement of a boiler and the refurbishment of pipework and insulation within the plant room. The urgency lay in the fact that of the two boilers serving the block, one was inoperative and the other was thought to be close to breakdown and if it failed there would be no provision in respect of hot water or heating for residents over the winter months.

2. Neither party requested an oral hearing and therefore in accordance with the Directions dated 2 January 2008 the matter was dealt with by way of a paper determination which was held on 26 February 2008.

3. The property is described in the application as a mansion block with 37 flats which are collectively known as Ovington Court.

4. The Tribunal has been provided with copy correspondence from the managing agents to the lessees, Stephen Aldcroft of Hannan Associates, RM Adjusting and a budget estimate from Genesis FM together with a copy of the draft specification.

### **The Applicant's case**

5. The Applicant's grounds for seeking consultation as set out in the application were "*if the boiler fails the tenants may be without heating and hot water over the winter months*".

6. In respect of the consultation which has been carried out or proposed to be carried the Applicant confirmed that no consultation has been carried out to date in the application.

7. The Tribunal were provided with a copy of a letter dated 9 January 2008 sent to the lessees by the managing agents which stated, inter alia, "*when we were appointed agents of Ovington Court, it was brought to our attention that one of the two gas fired boilers servicing the property had been taken out of service and the remaining boiler was in need of replacement.....When the specification of works has been drawn up and we have been provided with a budget cost for the works we will write to you*

*again advising you of the position and also enclosing a demand in respect of your proportion”.*

8. In an email dated 18 December 2007 Stephen Aldcroft of Hannan Associates wrote that *“the building is now wholly reliable (sic) for heating and hot water on one boiler that is beyond its serviceable life..... we would therefore recommend that the non functioning boiler should be replaced with new immediately and the remaining boiler refurbished if this is feasible..”* Enquiries were made on behalf of the landlords as to whether the one boiler presently functioning could be repaired in the event of a breakdown. By letter dated 9 November 2007 Genesis FM wrote that *“We have contacted the boiler manufacturers and have been advised that the parts required for this boiler are now obsolete”.*

### **The Tribunal’s determination**

9. The Tribunal may grant dispensation from the consultation requirements if it is satisfied that it is “reasonable to do so”. The Tribunal must have a cogent reason for dispensing with the requirements, the purpose of which is to ensure that the tenants who will have to ultimately foot the bill are fully aware of the works being proposed, the cost of the works and have the opportunity to nominate contractors.

10. All lessees have been provided with notice of the application by the Tribunal and provisional details of the works by letter dated 9 January 2008. Responses have been received from four of the lessees confirming that they had no objection to the dispensation with consultation. No objections have been received.

11. It is clear from the documentation that the parts required for the repair of the boiler are unavailable and that the boiler is obsolete. The Tribunal accepted the Applicant’s evidence that it had an urgent need to ensure the provision of hot water and heating to the lessees and that a new boiler was needed. To comply with the full dispensation requirements would mean that in the event of a boiler breaking down the residents would be without heating and hot water for the coldest part of the year. Accordingly, having considered the evidence before it, the Tribunal are satisfied that it is reasonable to dispense with the consultation requirements in respect of the works to be carried out to replace the boiler and associated works set out in

the draft specification and hereby grants dispensation in respect of those works.

12. The parties should note that this Determination does not concern whether any service charge costs in respect of the works are reasonable or payable by the lessees and that these costs may of course be challenged in due course pursuant to section 27A of the Act. The Tribunal's determination is limited to dispensation in relation to the requirements of section 20 of the Act.

*Julie Furl*

**CHAIRMAN**

**DATE**

*26th February 2008*