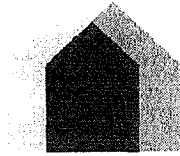


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BK/LDC/2010/0087

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD & TENANT
ACT 1985**

Address: 12 Hyde Park Street, London, W2 2JN

Applicant: 12 Hyde Park Ltd

Respondents: The Lessees

Application: 23 August 2010

Hearing: 21 October 2010

Appearances

Applicant

Miss R Virr Property Manager, Farrar Property Management

Respondents

Did not attend and were not represented

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr F. Coffey FRICS

Mr L. Packer

DECISION

Introduction

1. This is an application made by the Applicants under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with all/some of the consultation requirements imposed by section 20 of the Act.
2. The qualifying works in respect of which this application is made is for the removal and disposal of asbestos materials in the boiler and electrical room and to upgrade the central heating and hot water boiler system and related plant ("the proposed works").
3. The Applicant company is the freeholder of the property known as 12 Hyde Park Street, London, W2 2JN. It is comprised of six flats, which are owned by four lessees. Two of the lessees each own two flats. The four lessees each own a share in the Applicant company and are the Respondents to this application.
4. The factual background of this application can be stated shortly. On 20 July 2010, the communal hot water boiler was found to be discharging products of combustion back into the plant room. Therefore, both of the heating and hot water boilers were shut down and isolated from service because they were deemed to be dangerous. Asbestos materials were also found in the boiler and electrical rooms which required removal prior to the necessary remedial work being carried out.
5. It seems that the domestic hot water boiler has now been reinstated back into service and has passed a combustion and leakage test and the supply of hot water to the building has been restored. However, the heating boiler remains inoperable until remedial work can be carried out.
6. The Applicant, through its managing agent, Farrar Property Management, commenced statutory consultation in relation to the proposed works by serving a Notice of Intention on the Respondents on 22 July 2010. The notice expired

on 23 August 2010 and no comments or objections were received from any of the Respondents.

7. Statutory consultation did not proceed further because the two directors of the Applicant company, who are also leaseholders, instructed the managing agent to make this application to dispense with consultation in order to ensure that the heating was provided by this winter. Occupants of the building include elderly persons as well as children, including a newborn baby. If statutory consultation was carried out it would result in further delay because a specification would have to be prepared by a mechanical and electrical engineer which would take approximately 2-3 weeks to complete. It was anticipated that tendering for the proposed works would not take place until the end of September and, therefore, the second section 20 notice could not be served until mid October and expiring in mid-November. The proposed works are likely to take between 4-6 weeks to complete and excluding the time taken for the removal of the asbestos. Consequently, the Applicant made this application on 23 August 2010.

The Relevant Law

8. It is common ground that the proposed works qualifying works within the meaning of the Act. Section 20ZA provides:

"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the requirements in relation to... any qualifying works, the tribunal may make the determination is satisfied that it is reasonable to dispense with the requirements."

Decision

9. The hearing in this matter took place on 21 October 2010. The Applicant was represented by Miss Virr, the Property Manager from Farrar Property Management. None of the Respondents appeared nor were they represented.
10. Miss Virr essentially relied on the documentary evidence that have been filed in support of the application. She confirmed that the removal of the asbestos

had in fact been carried out at a cost of £5,650 plus VAT approximately 2 weeks earlier. The contractor who carried out the work was ARG Group who provided the lowest tender. This cost had been met from the reserve fund.

11. Miss Virr also confirmed that the building was still without heating at the present time. She said that since this application was made a tender report for the proposed works had been completed and sent to the two directors of the Applicant company about one month previously. In the interim, she had received no further instructions from the directors. Three tenders had been obtained, the lowest of which was £80,000 plus VAT. This tender had been provided by "DMG" who are the present boiler maintenance contractor. She estimated that the total cost of the proposed works would be in the region of £100,000. The balance in the reserve fund presently stood at £40,000 and would not cover the cost of the works. Miss Virr explained there are large service charge arrears for the building because none of the Respondents had paid any service charge contributions for some years. Remarkably, these included the two directors of the Applicant company who had instructed her to make this application. She also explained that there was no realistic prospect of undertaking the proposed works in the event that the Respondents continue to withhold their service charge contributions, even if the Tribunal granted this application. Nevertheless, her instructions were to continue with the application.

12. Having carefully considered the evidence in this matter, the Tribunal was satisfied that it was reasonable to dispense with the consultation requirements required by section 20 of the Act in relation to the tenders received for the proposed works. In so doing, the Tribunal was mindful of the fact that the application would be somewhat academic if the Respondents continue to withhold their service charge contributions.

13. In granting the application, the Tribunal had regard to the following matters:
 - (a) that the application was unopposed by any of the Respondents who are all shareholders in the Applicant company.

- (b) that given the imminent onset of the heating season and the inability of the Applicant to complete the required statutory consultation date before the commencement of the same.
- (c) the application is of an urgent nature given that there are vulnerable occupants in the building, namely the elderly and very young, and the further delay caused by having to carry out statutory consultation is to be avoided.
- (d) tendering for the proposed works has been completed and it is intended to accept the lowest tender. Therefore, the Respondents do not appear to be financially prejudiced by the failure to consult.
- (e) the Tribunal was satisfied that the Respondents are afforded the statutory protection of section 19 of the Act in relation to the costs that will be incurred for the proposed work.

14. It is important to note that, by granting this application, the Tribunal does not also make any finding as to the reasonableness of the actual or estimated cost of the proposed works.

Dated the 27 day of October 2010

CHAIRMAN.....
Mr I Mohabir LLB (Hons)

