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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LDC/2015/0122**
Property	:	**67C and 69 Cambridge Road, London NW6 5AG**
Applicant	:	**London Borough of Brent**
Representative	:	**Mr Phillip Patterson Counsel**
Respondents	:	**Mr Michael McCarthy** **Ms Paula Ann Mason Flat 67C** **Mr Afsan Ahmed** **Mr Oneil Ahmed Flat 69**
Representative	:	**Ms P A Mason for herself and Mr McCarthy**
Type of Application	:	**Section 20ZA Landlord and Tenant Act 1985 – dispensation with consultation requirements**
Tribunal Members	:	**Judge John Hewitt** **Mr Neil Martindale FRICS**
Date and venue of Hearing	:	**9 December 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 December 2015**

Draft 1DECISION

Decision of the tribunal

1. The tribunal determines that the need for the applicant to comply with the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 (the Act) as regards works to the gas supply to any of the properties 67A, 67C or 69 carried out between August and November 2015 shall be and are hereby dispensed with.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

3. A small block of six flats known as 65-69 Cambridge Road, London NW6 5AG is owned by the applicant (the council). At least two, if not more, of those flats have been sold on long leases, the secure tenant thereof having exercised the right to buy. Those two flats are 67C and 69.

4. Evidently there are two main entrances to the block and flats 67A, 67C and 69 share one of those entrances.

5. Flat 67A has not been sold off on a long lease and that flat is occupied by a secure tenant of the council.

6. Flat 67C, a top floor flat is let on a long lease granted to Mr McCarthy and Ms Mason in 2005 [15]. Flat 69 was let on a long lease granted to Oneil Ahmed and Musaret Ahmed in 1989 [56] and evidently is now vested in Mr Oneil Ahmed and Mr Afsan Ahmed.

7. On 15 July 2015 Ms Mason detected a smell of gas in the common parts and reported it to National Grid. National Grid attended and evidently capped the two separate gas supply pipes serving flats 67A and 67C and advised that a gas pipe needed repair. That was reported to Brent Repairs who evidently initially took the view on advice from Gas Monitoring that the council was not liable to carry out the repair and that the leaseholders should do so themselves. About three weeks later the council took a different view and decided it would carry out certain repair work.

8. The council has a long term agreement with Oakray Heating & Electrical Support Services (Oakray) entered into prior to 2013 for the provision of works such as repairs to gas supplies. Consequently, the council's obligation to consult pursuant to section 20 of the Act is governed by the provisions of Schedule 3 to The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations).

9. On 27 July 2015 Oakray provided the council with a quote for the 'Replacement of 3 no gas supply pipework from gas meters into kitchen

areas' The amount of the quote was £8,609.01. [141]. Evidently 4% is added on for management.

There are two aspects of the works, the first was to re-run gas supply pipes from each of the meters to the building and then to run pipework on the external façade of the building into each of the three flats.

10. By a letter dated 5 August 2015 the council gave the respondents notice of the intention to carry out works to re-run the gas supply from the meters under the communal gardens and then to the properties [73].

That notice stated that the estimated cost of those works to each of the respondents was £3,012.19, on the footing that the council had decided the costs should be borne by the owners of three flats concerned as opposed to the owners of the six flats comprising the building.

That notice invited observations or suggestions to be made in writing by 7 September 2015.

11. Evidently Oakray had advised the council that the repairs works should be carried out urgently so as to restore a gas supply for hot water and heating to each of the flats concerned. The council accepted that advice and the re-running of the gas supply pipes under the communal front garden was carried out on Saturday 8 August 2015 [127].

12. In an email to Ms Mason dated 11 August 2015 [132] the council stated that

"The work that is taking place is being done to restore the gas supply to out tenanted property. To restore their supply, the pipes that will carry your supply will have to be [re]placed at the same time. We will carry out the work impacting your property directly until it is agreed with you."

13. For reasons which are not material to the issue we have to determine the actual gas supply to flat 67C was not reconnected until November 2015. The council said that the gas supply to 67A and 69 was reconnected on 16 September 2015. As regards 69 this was challenged by Ms Mason who told us that having spoken with the lessee of 69, that property had remained connected to a gas supply throughout.

14. The tribunal received an application from the council pursuant to section 20ZA of the Act. It is dated 21 October 2015 [1]. Directions were given on 29 October 2015 [75]. Originally it was proposed that the tribunal would determine the application on the papers and without an oral hearing pursuant to rule 31 but in the light of the trenchant opposition to the application submitted Ms Mason it was decided that an oral hearing should take place.

The hearing

15. The oral hearing took place on 9 December 2015. The applicant was represented by Mr Phillip Patterson of counsel who was accompanied by three officers from the council. Ms Mason represented herself and Mr McCarthy. Mr A Ahmed and Mr O Ahmed, the lessees of 69 Cambridge Road were neither present nor represented.

The gist of the case for the council

16. Mr Patterson reminded the tribunal of the test to apply as set out in *Daejan Investments Limited v Benson & others* [2013] UKSC 14 and he then took us through the brief history as outlined above.

17. Mr Patterson submitted that if consultation had taken place as envisaged by Schedule 3 of the Regulations, the outcome would have been exactly the same; Oakray would have carried out the works and the cost would have been the same. The reality was that Oakray was always going to be requested to do the works in the light of the qualifying long term agreement and the cost would be calculated in accordance with the schedule of rates provided for in that agreement.

18. Mr Patterson asserted that a council officer had checked with insurers and had been informed that the subject works were outside the scope of the buildings insurance effected by the council.

The gist of the case for Ms Mason

19. Ms Mason also took us through the history from her point of view. Ms Mason said, and it was not challenged, that the consumer meters are located by the boundary wall close to the public highway and then from each meter there is an individual gas supply pipe running under the front communal garden to the exterior wall of the building and then within the building to the individual flats. Ms Mason asserted that the three separate gas pipes are not communal pipes but each one belongs to the owner of the flat it serves.

20. Having been given the section 20 notice dated 5 August 2015 Ms Mason believed that she had until 7 September 2015 to make observations as invited by the council. No one from the council told that her by then the council had already decided to go ahead with the works and had given a works instruction to Oakray. Ms Mason noted that the ground works had been carried out on Saturday 8 August 2015, she took this up with the council and even then no one from the council informed Ms Mason that she would be wasting her time making contact with British Gas and others about the scope of the works. Ms Mason spent some time effort in trying to get another estimate and advice on the scope of works properly required. Ms Mason complained that if the council had been open at the time she would not have wasted her time and effort.

21. Ms Mason also complained that despite requests the council has not provided her with a copy of the report issued by Oakray which the council relies upon in support of its decision to go ahead with the works without undertaking a proper consultation. Further, Ms Mason complained that by undertaking the ground works so quickly the

council did not properly investigate the cause of the failure of the supply pipe to its property, 67A and whether that failure might have been due to root damage caused by shrubs in the communal garden.

22. Ms Mason, quite properly, raised a number of issues about the manner in which the council managed the problem of the gas supply to its property, and as to whether the work falls within the service charge regime set out in the lease. For example, the following points/ questions arise:

22.1 The lease defines the building to be the block of flats known as 65-69 Cambridge Road;

22.2 The obligation on the lessee is to contribute to the costs incurred by the council in fulfilling its obligations on the matters mentioned in clause 6.1 and 6.2 of the lease. Clause 6.1(2)(b) is limited to *"... all gas and water pipes ...in under and upon the Building enjoyed or used by the Lessee in common with the lessees or occupiers of the other dwellings in the Building..."*.

22.3 The third schedule to the lease contains a number of covenants on the part of the lessee. Paragraph 5 imposes an obligation on the lessee to keep the flat and all fixtures and fittings therein in good and tenantable repair and condition including *"... all wires cables ...internal pipes and appurtenances serving the flat exclusively"*.

22.4 One of the rights granted to the lessees in paragraph 2 of the first schedule to the leases is: *"The free passage and running of ...gas ... through ... pipes ... in under or upon any part of the Building and its curtilage together with rights to maintain and repair the same"*

22.5 If the separate gas supply pipes are not communal pipes and they are the responsibility of each flat owner, the council should be responsible for the cost of the repair to its flat, 67A. If to restore a supply to flat 67A it was necessary to do some work on the supply pipe to 67C the cost of that work was part and parcel of the cost of repair to the supply pipe to 67A and was not a cost to be borne by or contributed to by the owner of 67C.

22.6 No proper trace and repair exercise was carried out. No evidence has been produced to support the contention that there was a fault with the gas supply pipe to 67C.

22.7 If someone took the view that it would be 'sensible' to replace the supply pipe to 67C at the same time as replacing the pipe to 67A, that should have been the subject of a discussion with Ms Mason and Mr McCarthy and it was not open to the council to act unilaterally and then to seek to pass the costs through the service charge.

22.8 If flat 69 was never without a gas supply it is unclear what works, if any, were undertaken to the gas supply pipe to that flat.

22.9 There was no proper basis for the council's decision that the cost of works it undertook should be shared between only three of the six flats comprising the building. Thus if the works were properly carried out in accordance with the service charge regime set out in the leases the proper and reasonable cost of those works should be shared equally between the six flat owners.

Discussion

23. We recognise that where there is a smell of gas it is incumbent on the landlord to take appropriate steps commensurate with the risks involved.

24. In the circumstances of this case we find it was not unreasonable for the council to place a works order for works to be carried out to restore a supply of gas to its flat 67A provided that it acted upon a proper and report to support that decision.

25. The difficulty in this case is twofold. First it is not clear what scope of works was properly required to restore that supply, no supporting report has been provided. Although three officers from the council accompanied Mr Patterson to the hearing, including, a gas inspector, none of them were really able to provide much help or information as to what work was properly done and to what pipe(s). There appeared to be a general view that the individual pipes from the consumer meters to the building were the responsibility of each flat owner, but there appeared to be a difference of view as to whether any of the pipes concerned were communal pipes within the terms of the lease. There was a hint that the pipes serving 67A and 67C may have been joined at one point but this was contested by Ms Mason.

26. Mr Patterson submitted that whilst Ms Mason may have raised some issues which may go the liability to contribute to the works, and if so the amount of that contribution, Ms Mason had not shown any prejudice (within the meaning explained in *Daejan*) arising from the decision of the council not consult the lessees in compliance with Schedule 3 to the Regulations.

27. We agree with submission made by Mr Patterson and we have therefore granted the dispensation sought.

28. Having done that we make it very clear that questions as to whether or not the works fall within the service regime and if they do whether or not the scope of works and the cost of works are reasonable and/or the amount of the contribution is reasonable. These are all matters which remain open if the council decides to press on with a claim to a contribution.

29. We also make the observation that it was unfortunate that the council wrote to Ms Mason in the terms of its notice dated 5 August 2015 misleading her to believe that it was open to her to make observations on the proposed works, when the council knew, or ought to have known, that if Ms Mason did so she would be wasting her time because the council had already decided what it was going to do and had placed a works order with Oakray.

Judge John Hewitt
23 December 2015