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

Case Reference : **LON/OOAM/LDC/2013/0111**

Property : **Various flats at 1 Marcon Place
London E8 1LP**

Applicant : **Family Mosaic**

Representative : **None notified**

Respondents : **Various Lessees of flats at 1 Marcon
Place, London E8 1LP as per list
attached to the application and the
Tribunal's Directions of 16 October
2013**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the
consultation requirements**

Tribunal : **Judge Goulden
Mr L Jarero BSc FRICS**

**Date and venue of
Hearing** : **Thursday 5 December 2013 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **5 December 2013**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985 (" the Act"). The application was dated 11 October 2013 and was received on 14 October 2013.
2. Directions of the Tribunal were issued on 16 October 2013. Forms for completion by the lessees in respect of the S20ZA application were attached to the Tribunal's Directions which the Applicant was directed to send to each lessee by 28 October 2013.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.
4. One completed form from the tenant of Flat 9 in support of the application had been received. Another form was received from the tenant of flat 7 at the property, but this did not say whether that tenant supported or objected to the application, but merely stated that written representations would be supplied to the Tribunal by 18 November 2013. No written representations were received from or on behalf of any of the Respondents.

The hearing

5. The matter was determined by way of a paper hearing which took place on Thursday 5 December 2013.

The background

6. 1 Marcon Place, London E8 1LP ("the property") which is the subject of this application is described in the application as a purpose built block consisting of 12 properties, being two 3 bedroom maisonettes, one 2 bedroom flat, one 4 bedroom maisonette and eight 1 bedroom flats.
7. The proposed works related to replacement of a new booster pump. It was maintained in the application "*due to the increasing demand for water at Marcon Place, the water booster pump was in need of an upgrade. The booster pump allows for the freeflow of running water*

throughout the block. The pump has become faulty which would not allow for the pump to run in automatic mode and could only run on manual. This became a problem for residents on the upper levels of the block as the water pressure was very low or during peak periods in some cases they had no hot or cold water at all. The booster new pump was installed on the 28th September 2013. Letters dated the 26 September 2013 was sent out to all residents detailing the nature of the works and advising that the works would commence on the 28 September 2013. The letter also informs residents that an application for dispensation was also being made. During the period of the works the water supply was run off the bypass thereby minimising any disruptions to residents. We are seeking the dispensation for all of the works as the works are regarded as an emergency to ensure water continued to be supplied to all properties. With only one pump in operation and due to the time it would take to go through the consultation process, it was likely the water supply could have been disrupted”.

8. No formal Notice of Intention under the Act had been sent to the lessees, but a letter of explanation to the lessees dated 26 September 2013 was provided to the Tribunal.
9. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. A copy of the leases of various flats were provided to the Tribunal. The leases required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge.

The issues

11. The issues are as set out in paragraph 7 above.

The Applicant's submissions

12. Written submissions were received on behalf of the Applicant.
13. The Applicant contended, inter alia, “on 23 August 2013 Mears contractors appointed by Family Mosaic attended an Out of Hours call out at Marcon Place following reports from residents of no water supply. Mears carried out the repair to the pump. On the 24 August 2013 Mears carried out a follow up inspection of the water pump and concluded the pump needed to be renewed. On the 28 August 2013 Mears received a call out of no water to the upper floors of the block, however water was running to the flats on the ground floor. On the 28 August 2013 Mears attend and repaired the water booster pump. On the 9 September Mears received a call from a resident to advise of low

water pressure. 13 September 2013 Family Mosaic requested quotes to renew the booster pump. 26 September 2013 Family Mosaic wrote to all leaseholders at Marcon Place to inform them of the dispensation from section 20 consultation for the upgrade of the booster pumps. Due to the urgency to carry out these works Family Mosaic felt it would not be appropriate to go through the full consultation as there would be a possibility of further water failure in the block. On the 28 September 2013 the contractors carried out the renewal works to the pump”.

14. The Tribunal has been provided with copies of three quotations, being T Brown Group in the sum of £4,590 plus VAT, John Bold & Co Ltd. in the sum of £5,332.82 plus VAT and Smith & Byford (which specified two options) in the sum of £15,856.16 plus VAT or £12,819.74 plus VAT. It appears that the T Brown Group estimate in the sum of £4,590 plus VAT was accepted and, with VAT and administration fees of 15%, the total cost was £6,196.50. The estimated unit contribution was £516.35.

The Respondent’s submissions

15. No written representations were received from or on behalf of any of the Respondents.

The Tribunal’s Determination

16. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

17. Dispensation is dealt with by S 20ZA of the Act which provides:-

“Where an application is made to a leasehold valuation 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”

19. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
 - (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
 - (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
 - (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period;**
- and**
- (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
22. No Respondent had challenged the consultation process. No written submissions have been received from or on behalf of any of the Respondents.
23. Clearly there was a failure of the main water supply. From the chronology, this was an ongoing problem which could not be resolved by repair of the pump. The Tribunal accepts that there was some urgency and the tenants would have expected a constant supply of water for their needs, the absence of which could have led to health and safety concerns.
24. The Tribunal is satisfied that, in the particular circumstances of this case, the Respondents are not unduly prejudiced and it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.
25. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: J Goulden

Date: 5 December 2013