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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LDC/2017/0010**
Property	:	**41 Millharbour, London E14 9NA**
Applicant	:	**Millharbour Management Ltd**
Representative	:	**Charles Russell Speechlys**
Respondents	:	**The lessees listed in the schedule to the application**
Type of application	:	**To dispense with the requirement to consult leaseholders**
Tribunal Member	:	**Judge N Hawkes**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of paper determination	:	**6th April 2017**

DECISION

Background

1. The applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 41 Millharbour, London E14 9NA ("the Estate").

2. The Tribunal has been informed that the Estate includes 352 residential flats which are let on long leases.

3. The application is dated 30th January 2017 and the respondent lessees are listed in a schedule to the application.

4. Directions of the Tribunal were issued on 3rd February 2017. The applicant has requested a paper determination.

5. No application has been made by any of the respondents for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 6th April 2017.

6. The Tribunal did not consider that an inspection of the Property would be of assistance nor would it have been proportionate to the issues in dispute.

The applicant's case

7. The applicant applies for dispensation from the requirements to consult leaseholders under section 20 of the 1985 Act in respect of works which have already been undertaken to the communal boilers which serve the residential flats on the Estate.

8. The Tribunal has been informed that Ringley Limited ("Ringley") was appointed by the applicant as its managing agent in 2005.

9. On 19th February 2016, a dilapidation report was prepared for Ringley in which it was stated that consideration should be given to replacing two of the boilers serving the Estate and, on 5th April 2016, Ringley served a notice of intention to carry out the work on the lessees.

10. The applicant states that no written observations or proposals were received from any lessee in response to the notice of intention dated 5th April 2016. In June 2016, Ringley prepared a specification for the boiler replacement work to be put out to tender.

11. However, on 30th June 2016, the applicant served Ringley with three months' notice to terminate Ringley's appointment. As regards the delay, the applicant states that unfortunately Ringley then did very little to progress the consultation process. Ringley did however, obtain

an estimate from Contract Energy Management Limited ("CEM"), one of the contractors who had been named in the notice of intention.

12. On 30th June 2016, Ballymore Asset Management Limited ("Ballymore") was instructed to act as the applicant's managing agent in place of Ringley with effect from 1st October 2016 when Ringley's appointment was due to come to an end.

13. On 2nd October 2016, two days into its appointment as managing agent, Ballymore was informed by CEM that, of a twin set of boilers in one of the plant rooms which served half of the Estate, only one of the boilers was functional and that boiler was at imminent risk of failure.

14. Ballymore relayed this information to its mechanical and electrical team and a meeting took place with CEM on 19th October 2016 to discuss the proposed work. There was then an internal assessment of the situation within Ballymore and instructions were taken from the applicant. CEM provided the applicant with a formal schedule of the work on 25th November 2016. The total cost of the proposed work was £137,785.90.

15. The applicant states:

"By late November 2016 it was no longer possible to follow the consultation process under the 1985 Act if works were to begin before Christmas 2016. The Applicant did not want the lessees and residents to be in a position where the one remaining boiler failed completely and they were once again left without hot water and heating at Christmas. The Applicant also considered that it would be more cost effective to carry out the works as soon as possible rather than wait for the remaining boiler to fail and then need to instruct an emergency contractor at premium cost with limited or delayed availability.

Upon the above basis the Applicant deemed that the most practical course of action was not to complete the full consultation process under the 1985 Act. The Applicant's priority was ensuring that the lessees and residents had heating and hot water throughout the winter."

16. A letter regarding the proposed work was sent to the lessees on 1st December 2016. A copy of the estimate for the work was enclosed and the letter explained how any queries or concerns could be raised.

17. One response to this letter was received by email from the lessee of Flat 78. The lessee of Flat 78 raised three points but did not object to work being undertaken before the statutory consultation requirements had been fully complied with.

The respondents' case

18. The Tribunal has received 22 forms from lessees expressly supporting the applicant's application. The Tribunal has received a form from the lessee of Flat 27 opposing the application without giving any reasons. The only written representations which have been received in opposition to the application have been provided by Mr McKiernan of Flat 31.

19. Mr McKiernan states:

"The concern raised by myself is that the service charge is going to be used to make good failures and omissions by the applicant...

My concern is that the property at 41 Millharbour was built with inadequate unsuitable boilers and the problems have been masked to avoid the costs falling fairly and squarely on the applicant.

The applicant obtained schemes to reduce the level of heat in the building, which were at best cosmetic and at worst just aimed at deferring problems to another financial year...

The information as to whether the works were done on time and on budget has oddly not been sent with the application or sent on.

An adequate application would set out in some detail why there had been no consultation the sad fact is consultation was not a priority.

It seems that the building was built and designed with two boilers but that the revised scheme will have three boilers. If the original design was 3 boilers then the belated introduction of a third boiler raises cause for concern. This on the fact of it suggests improvements, not maintenance, and the leaseholders are being asked to subsidise the owner.

If the applicant had put in place originally an adequate inspection and maintenance program in relation to the boilers, a critical aspect of any functioning building, then it is difficult to see how the present state of affairs would have arisen."

The Tribunal's determination

20. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as is the case in this instance) 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.

21. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.

22. Section 20ZA of the 1985 Act provides that, where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

23. The Tribunal considers that there is considerable force in Mr McKiernan's submission that consultation does not appear to have been a priority given that the notice of intention was served over 7 months before the work commenced.

24. However, the Tribunal notes the applicant's account of the change in its managing agents and does not expect such a situation to arise in the future. The Tribunal also notes that Mr McKiernan does not assert that he has suffered prejudice as a result of the applicant's failure to comply with the statutory consultation requirements.

25. The Tribunal is of the view Mr McKiernan's other representations relate to the reasonableness and/or payability of the service charge costs which may potentially be challenged by way of an application under section 27A of the Landlord and Tenant Act 1985.

26. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

27. Having considered the application; the evidence in support; the fact that this decision does not concern the issue of whether any service charge costs will be reasonable or payable; and the 22 forms which have been received from lessees expressing their support for the application; the Tribunal accepts that the qualifying works described in the applicant's application of 30th January 2017 were urgently required and determines, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable to dispense with the statutory consultation requirements in respect of this work.

Judge N Hawkes

Date 6th April 2017

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.