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**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL**

**APPLICATION UNDER S 20ZA OF THE LANDLORD AND TENANT ACT 1985,  
as amended**

**REF: LON/00AN/LDC/2012/OO31**

**Address:** Charleville Mansions, Charleville Road, London  
W14 9JB

**Applicant:** Bolton Gardens (Properties) Ltd.

**Represented by:** Douglas & Gordon, Managing Agents

**Respondents:** Certain lessees of Charleville Mansions (as per  
schedule attached to the application)

**Tribunal:** Mrs JSL Goulden JP

**Date of Tribunal's Decision: 25 June 2012**

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1 The Applicant, who is the landlord of Charleville Mansions, Charleville Road, London W14 9JB ("the property") has, through its agents, Douglas & Gordon, applied to the Tribunal by an application dated 19 March 2012, and received by the Tribunal on 22 March 2012, for dispensation of all or any of the consultation requirements contained in S20 of the Landlord and Tenant Act 1985, as amended ("the Act"). The original application had been drawn incorrectly as showing the managing agents as the landlord Applicant. A revised, and corrected, application was received by the Tribunal on 29 March 2012.

2. The Applicant had requested that the matter be dealt with by way of a paper determination, and no application was made on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Monday, 25 June 2012.

3. A copy of the lease of Flat 23 was in the case file, although it was noted that it was incomplete. With no evidence to the contrary, it has been assumed that all the residential leases are in essentially the same form.

4. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

## The Applicant's case

5. The Applicant was seeking dispensation of the consultation requirements for replacement of one hot water boiler and associated equipment serving the North Block of the property. The works had commenced on 5 March 2012 and had been completed on 10 March 2012.

6. In written submissions dated 26 April 2012, the Applicant's managing agents, Douglas & Gordon, stated, inter alia:

*"Charleville Mansions comprises 44 flats on the South and North sides of Charleville Road. There are two non-linked gas-fired boiler plant systems providing hot water to the flats in the two blocks, the heating on individual systems demised and controlled by leaseholders.*

*At the Charleville Mansions Residents Committee meeting on the 26 January 2012, representatives from Douglas & Gordon reported on the current condition of the two sets of boilers, following reports that the hot water supply in the North Block had failed on a number of occasions in recent weeks. It was advised that an M & E consultant, Libra Services, had already been appointed to inspect the equipment with a view to issuing a specification for tender for replacing the plant in the coming summer of 2012. This visit took place on 7 February.*

*In discussions with our client in preparing the service charge budget for the year commencing April 2012, an allocation of £50,000 had been set aside to fund the boiler replacement project. Accordingly it was anticipated that a replacement project would be required in the coming months subject to available funding and consultation in due course.*

*On 16 February, we were notified that the boiler in the North Block had failed again, but on this occasion repair would be impossible. The agent of the units and the condition was such that replacement parts could not be sourced. Our client and the Residents Association were notified of the issue, and that efforts were being made to source either a temporary supply or to progress replacement of the permanent unit. Libra Services were instructed to proceed with exploring both proposals.*

*The works comprised replacement of the existing boiler and calorifier units with two gas fired water heaters, including a water softener to prevent scaling.*

*The replacement work was organised by Libra Services and a firm of contractors known to them GBS (South East) were instructed to proceed, commencing work on Monday 5 March and completing at the end of that week. This followed removal of the existing boiler plant at the end of the preceding week.*

*GBS provided a written estimate for carrying out the works. Libra Services did try and obtain alternate estimates from the incumbent boiler maintenance contractors, C Jones & Associates Ltd. but were not successful. A first stage notice of intention was issued to leaseholders on 21 February 2012 but no written nominations were received.*

*In view of the urgency of the situation in that 22 of the flats had no current provision of hot water, including elderly and young residents, in agreement with our client, it was felt that the replacement option would be more beneficial and less disruptive in the long term to the residents of the building. The residents affected were obviously concerned that there may be a protracted period whilst consultation was underway when there would be no hot water provided and there was a consensus that the supply should be reinstated as soon as possible. This necessitated the boiler replacement project to be undertaken without going through the normal consultation procedures as would have been the case if the boiler unit had remained functional until the summer months as anticipated.”*

7. The anticipated total costs including professional fees were said to be £38,790 and the breakdown was set out. The Tribunal was advised that all leaseholders had been kept apprised of the project and it was stated that there had been favourable responses from 15 leaseholders.

8. A copy of the Notice of Intention dated 21 February 2012 was not in the hearing bundle, as directed by the Tribunal (Direction 7), but a copy was faxed at the request of the Clerk to the Tribunal on 25 June 2012 and placed before the Tribunal.

### **The Respondents' case**

9. No written representations were received by the Tribunal from any of the Respondents, but notification was received from the lessees of Flats 1,3, 4,5,6, 10 11,18,20, 23, 25,26,27,29,33,38,40, 41,42,43 and 44 confirming that they were agreeable to dispensation of the consultation requirements. An unclear response was received from the lessee of Flat 21.

### **The Tribunal's determination**

10. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that lessees 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.

11. The financial burden on the lessees is potentially onerous but in this case, the Tribunal determines that the lessees would not be prejudiced by the Applicant's failure to consult fully.


12. A Notice of Intention had been sent to the lessees on 21 February 2012, and it was stated in the Applicant's submissions *"no written nominations were received"*.

13. It is accepted that due to the failure of the boiler and the impossibility of repairing the same, a situation has arisen whereby 22 out of 44 flats are without a hot water supply. Although no written submissions were received from any of the Respondents, it is noted that a number of lessees have confirmed that they did not oppose the application

14. Accordingly the Tribunal is satisfied that 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.

**15. It should be noted that in making its determination, and as stated in Directions, this application does not concern the issue of whether any service charge costs are reasonable or payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

CHAIRMAN.....

DATE ....25...June.... 2012.....