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LONDON RENT ASSESSMENT PANEL-



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**DECISION ON AN APPLICATION UNDER SECTION 20ZA LANDLORD  
AND TENANT ACT 1985**

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**Ref: LON/00AW/LDC/2012/0097**

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**Property:** 1-2 Airlie Gardens, London W8 7AJ

**Applicant:** Termcontrol Property Management Limited

**Respondents:** All leaseholders of the Property (as per the attached list)

**Determination date:** 29<sup>th</sup> October 2012

**Tribunal:** Mr P Korn

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**BACKGROUND**

1. The Applicant is the Respondents' landlord at the Property. The Property comprises a 5-floor conversion of 2 houses divided into 14 flats. It would appear from the list of Respondents that only 13 out of the 14 flats are held on long leases.
2. On 28<sup>th</sup> August 2012 the Tribunal received an application from the Applicant seeking dispensation from certain of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) ("**the Act**") in respect of qualifying works.
3. Directions were issued on 30<sup>th</sup> August 2012, and the Procedural Chairman determined that the application should be dealt with by the Tribunal on the basis of the papers alone (i.e. without an oral hearing) unless any party required the matter to be decided in a hearing. No request for a hearing has been received and therefore the application is being determined on the papers alone.

## THE APPLICANT'S CASE

4. In its application the Applicant has explained that works were recently carried out to the lift controls and that, during this time, the lift was switched off and this caused the loss of the stored memory data needed for the lift to function correctly. It seems that this arose because the back-up internal battery failed at the same time. The lift maintenance company completed a modification to return the lift to service, but over the following days there were a number of breakdowns and someone was trapped inside the lift.
5. As a result of the abovementioned events, the Applicant considered that works to install a new diagnostic board, 'e-prom' kit and ram chip – followed by reprogramming and thorough testing – were urgently needed. The cost of the works as quoted by the Applicant's lift consultant was £1,276 + VAT, and the works were duly commissioned and were due to be completed by 13<sup>th</sup> August 2012.
6. A notice of intention was issued to the Respondents on 9<sup>th</sup> August 2012 together with a covering letter explaining the situation and why it was felt that full consultation was not possible. The letter also invited the Respondents to contact the Applicant's managing agents if they wanted to discuss the matter or make any comments or observations. The Applicant submits that the works could not wait until the full consultation process had been completed as there were residents on upper floors with babies and that it would be hugely inconvenient for them to be without a safely functioning lift for the duration of a full formal consultation.
7. The Applicant has also stated that "The Section 20 threshold is £965 [for] lift works in this building", but the Tribunal is unclear how the Applicant has calculated this figure. Based on the limited information supplied, the figure appears to be incorrect.

## RESPONDENTS' RESPONSES

8. Mrs Foreman, the leaseholder of Flat B, has written to the Tribunal in support of the application. In addition, the Applicant has provided the Tribunal with hard copies of emails in support of the application from Mr Mann, joint leaseholder of Flat G, and Mr Buckley, the leaseholder of Flat J. The Tribunal has not received, and is not aware of, any objections to the application by or on behalf of any of the other Respondents.

## THE LAW

9. Under Section 20(1) of the Act, in relation to any qualifying works "*the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... a leasehold valuation tribunal*".

10. Under Section 20ZA(1) of the Act *“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..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”*.

#### **APPLICATION OF FACTS TO LAW**

11. The Applicant has made its application on the implied basis that it considers the works concerned to be qualifying works within the meaning of Section 20(1) and Section 20ZA(1) of the Act and that these provisions therefore apply to the works.
12. Based on the small amount of information provided by the Applicant, the cost of the works does not appear to exceed the financial threshold of £250 per unit needed for the consultation requirements to apply. However, it is possible that the Applicant considers that the works should be aggregated with other works in order to determine whether the cost exceeds the relevant financial threshold and/or that the Applicant has other information which has not been communicated to the Tribunal and which would cause the cost of these works to exceed the relevant financial threshold.
13. If the cost of the works does not exceed the relevant financial threshold then no dispensation from full compliance with the Section 20 requirements is necessary because those requirements do not apply. However, in order to be helpful to the Applicant, the Tribunal is prepared to make a determination on the assumption (which may or may not be a correct assumption) that the consultation requirements do apply.
14. On the assumption that the consultation requirements do apply, the Tribunal is satisfied that it is reasonable to dispense with those of the requirements which have not already been complied with. The Applicant has made a reasonable attempt to comply with the initial stages of the consultation process and has invited feedback. The situation is one in which the Tribunal considers it reasonable for the Applicant to have concluded – for the reasons given by the Applicant – that it would cause undue and disproportionate inconvenience and distress to occupiers (particularly those on high floors with babies) to have to wait until a full consultation process had been gone through. In addition, importantly, none of the Respondents has objected to the lack of full consultation and three of them have written in support of the Applicant’s application.

#### **DETERMINATION**

15. The Tribunal hereby determines to dispense with those of the consultation requirements not yet complied with in relation to the works

which are the subject of this application to the extent (if at all) that they constitute qualifying works for the purposes of Sections 20(1) and 20ZA of the Act.

16. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness or otherwise of the cost of the works.
17. No cost applications have been made.

Chairman:  P Korn

Dated: 29<sup>th</sup> October 2012