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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LDC/2014/0019**
Property	:	**1 Upper Brook Street, London W1K 6PA**
Applicant	:	**1 Upper Brook Street RTM Company Limited**
Representative	:	**D & G Block Management**
Respondent	:	**Various Leaseholders at 1 Upper Brook Street, London W1K 6PA**
Representative	:	**None known**
Type of application	:	**To dispense with the requirement to consult lessees about major works (s20ZA Landlord and Tenant Act 1985)**
Tribunal members	:	**Tribunal Judge Andrew Dutton**
Decision venue and date		**10 Alfred Place London WC1E 7LR on 17th March 2014**
Date of Decision	:	**17th March 2014**

DECISION

DECISION

Having considered the papers I am satisfied that it is reasonable to grant dispensation from the consultation requirements set out at section 20 of the Landlord and Tenant Act 1985 ("the Act")and the Service Charge (Consultation requirements)(England) Regulations 2003. This dispensation does not preclude the Respondents, or any one of them, challenging the reasonableness of the works as provided for at sections 19 and 27A of the Act.

BACKGROUND

1. By an application dated 5th February 2014 the Applicant, through its agent D & G Block Management (D&G) sought dispensation from the consultation requirements under s20 of the Act, pursuant to s20ZA.

2. The Application set out the following grounds:
"On the 21st December 2013 communal boiler serving 6 units failed. Boiler provided hot water and heating to all 6 apartments. We were advised that two of the nine sections had split and would cost over £8K to repair. There was a chance that regardless of two identified sections being repaired without breaking down boiler remaining seven could be damaged also.
In addition it has been identified that British standard 6644:2005 advises upon size required for the open vent for safety reasons. Unfortunately now insulation has been removed it is apparent that the open vent pipe is undersized, which produces a potentially dangerous situation. The cost of replacing the open vent through the building together with disruption would be prohibitive. To conform to the British Standard it will be necessary to install a pressurisation unit and expansion vessel.
After employing consultant to tender for works it was apparent that to replace boiler would cost in region of £23K so decision was made to undertake complete replacement with back up system.
Work instructed on Friday 31st January commenced on 3rd February 2014 but not yet completed".

3. In a bundle provided for the paper determination of this application there was a copy of the directions issued on 11th February 2014, a sample lease, a breakdown of two quotes apparently attached to an email from Rob Wallace to leaseholders dated 13th January 2014 and various other emails. The quotes indicated that the cheapest contractor for the replacement of the boilers was BMC Combustion Limited at a price of £19,438.85. An order was placed with them on 29th January 2014. It appears however, that after the commencement of the installation works further issues were discovered relating to the venting of the heating system which needed to be resolved at a further cost of £2,193.95 plus VAT. Details of this further item of expenditure appear to have been sent to the leaseholders by emails dated 11th February 2014.

4. With the directions issued on 11th February 2014 was a form of response to be completed by each leaseholder. At the time of this determination there appear to be two positive responses from Leila Takla and, it appears,

Kombahari Limited. In an undated letter received at the Tribunal on 19th February 2014, D&G told the Tribunal that copies of the directions had been served on all leaseholders on 17th February 2014.

THE LAW

Landlord and Tenant Act 1985 (as amended)
Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or

each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

FINDINGS

5. I should first mention that it seems to me that the correct applicant is the RTM company and not Grosvenor Estates as shown on the directions. In reaching my decision I have borne in the mind the relevant provisions of the Act and the Supreme Court decision in Daejan v Benson. It appears clear from the papers before me that urgent attention was required to the hot water and heating system at the property. The residents have unfortunately been without heating and it would seem a decent hot water supply for some time. I am not told whether the installation works have now been completed and whether there was any variation from the costs set out in the papers before me.

6. The lessor's covenants, for which the Applicant has responsibility since acquiring the right to manage, include at clause 5 (1) (e) of the specimen lease in the bundle, an obligation to maintain the boilers supplying the heating and domestic hot water system serving the Building. The lessee's responsibility to pay for the maintenance and indeed replacement of the heating and domestic hot water system is to be found at paragraph 3 of the Third Schedule to the said lease.

7. I am satisfied from the papers before me that the Respondents have been informed of the cost and would of course be aware of the need. No Respondent has objected and none have put forward any evidence of prejudice caused to them by dispensation being granted. Accordingly I will grant dispensation under the provisions of s20ZA of the Act.

8. It should be noted however, that such dispensation does not remove the need for the Applicant to satisfy the provisions of section 19 of the Act as to the reasonableness of the works, in particular the standard and the costs. Any Respondent unhappy with those elements has the protection afforded them by s27A of the Act.

Andrew Dutton

Tribunal Judge Andrew Dutton 17th March 2014.