



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

Case Reference : LON/00AT/LDC/2016/0023

Property : Wallis & Beecham House, Great West Road, Brentford TW8 OHD

Applicant : Willem Properties & E.J Ground Rents

Representative : Mr R Manikon & Mr M.C Dowland for Barratt Residential Asset Management

Respondents : Various leaseholders as set out in the schedule attached to the application

Representative : None

Type of Application : For dispensation of the consultation requirements under section 20ZA

Tribunal Member : Judge O'Sullivan
Mr K Cartwright FRICS

Date of Decision : 8 June 2016

DECISION

The application

1. The Applicants seek an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements in respect of the replacement of four boilers at the property known as Wallis and Beecham House, Great West Road, Brentford TW8 OHD (the “Property”). The individual blocks have different landlords but are served by the same boilers. The application is made against the various leaseholders in the schedule attached to the application form (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicants seek dispensation in respect of qualifying works to be carried out.

The background

4. The application was received on 16 February 2016. Directions were made dated 17 February 2016 which provided for the Applicants to serve a copy of the directions on all Respondents and for them to then indicate whether they consented to the application and wished to have a hearing.
5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was duly requested by the leaseholder of flats 701 and 702. A hearing was scheduled to take place on 13 April 2016. However due to an oversight the managing agents (although present in the tribunal) were not heard at that hearing and accordingly it was adjourned and further directions made. The application was heard on 8 June 2016 and attended by Mr Moniker and Mr Dowland for the Applicants and the leaseholder of flats 701 and 702, Ms Ouzonian.
6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicants' case

8. The Applicants had filed a bundle containing a statement of case. Evidence was heard from Mr Moniker and Mr Dowland as to the history of the works. The present managing agents had taken over the management of the Property in 2013. The Property comprises some 151 residential units and commercial premises. The commercial premises are not served by the boilers and have a separate electrical system.
9. There are 5 boilers serving the Property. Originally on completion there had been 6 boilers but following problems a decision had been taken to stand down the 6th boiler as it was deemed unnecessary. On 20 January 2016 two of the boilers failed. On 3 February 2016 a further 2 boilers failed. A decision was then taken to replace all four boilers and the works were carried out on 5 February 2016.
10. It was confirmed that engineering insurance was in place although this was said to cover only an annual inspection and catastrophic failure. A claim had not been made as the Applicants had been advised that it was unlikely to be successful.
11. Mr Dowland explained that since they had taken over management they had put stringent maintenance procedures in place. Historically we heard that there had been issues with debris building up in the system which had caused issues. However the new managing agents say that in 2013 a survey of the system had been commissioned further to which all of the HIUs in each flat had been serviced with the cost borne by the landlord and the leaseholders were now reminded of their obligation to service the HIUs in the individual flats annually.

The Respondents' position

12. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case.
13. Ms Ouzonian attended the hearing to oppose the application. She had not served a statement although she had completed the form indicating that she opposed the application and requesting a hearing. She is the non resident leaseholder of Flats 701 and 702. She challenged the application on the basis that there had historically been issues with the boilers and those repairs should have been effected much earlier. It was her case that had necessary repairs been carried out in a timely manner the need for replacing the boilers would have been avoided. She also questioned why the boilers had only lasted for some 8 years. She did not have any expert evidence to support her claim that the Applicants had failed to properly maintain the boilers.

14. Mr John Dalmaris, also a leaseholder, also opposed the application and sent an email dated 28 February 2016. He appeared to challenge the necessity for the replacement on the basis of past and continuing problems with debris in the system. However he attached no evidence in support of his contentions.

The Tribunal's decision

15. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the replacement of the four boilers and associated works.

Reasons for the Tribunal's decision

16. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
17. The application was not opposed by the majority of the leaseholders. The tribunal is satisfied that the replacement of the four boilers was urgently needed in February 2016 when all four of the boilers failed. To have failed to replace them at that point and carry out full consultation would have left 151 leaseholders without heating and hot water for some considerable period.
18. The tribunal heard that the Applicants had been advised by their contractor that a claim under the insurance policy would be unlikely to be successful as the replacement works were likely to be deemed to be wear and tear. However in our view given the policy was said to cover "catastrophic failure" the Applicants would be wise to consider making a claim.
19. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.
20. The parties should be aware that this decision does not concern the issue of whether the service charge costs are reasonable and payable and those costs may be the subject of a challenge under section 27A of the Landlord and Tenant Act 1985. If the Respondents consider that the costs are unreasonable in the light of the alleged failure to properly maintain the boiler system an application may be made under this section. However should the Respondents wish to pursue such an application they should consider taking expert advice.

Application under s.20C

21. There was no application for any order under section 20C before the tribunal.

Name: S O'Sullivan

Date: 8 June 2016