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

Case reference : **LON/00AL/LDC/2018/0063**

Properties : **Paynes and Borthwick Wharf,
Wharf Street, London SE8 3GG**

Applicant : **Paynes and Borthwick Wharves
Residents Company Limited**

Respondents : **The leaseholders of the Property as
per the application**

Type of application : **To dispense with the requirement
to consult leaseholders about
major works**

Tribunal member : **Judge P Korn**

Date of decision : **2nd May 2018**

DECISION

Decision of the tribunal

- (1) The tribunal dispenses with the consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
- (2) No cost applications have been made.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("**the 1985 Act**") from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to certain qualifying works, to the extent that those requirements have not already been complied with.
2. The Properties comprise a modern purpose-built development of several tower blocks of varying sizes containing 270 flats between them.
3. The application concerns qualifying works to replace boilers supplying heating and hot water to the Properties.

Paper determination

4. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant's case

5. The Applicant states that at the beginning of March 2018 Michael Laurie Magar Limited (MLM) on behalf of the Applicant was advised by the boiler and plant maintenance team for the Properties that two out of the three boilers were not working. Further investigations showed that the boilers required expensive repair or – more probably – replacement. In addition, the third boiler was exhibiting signs of distress, and the loss of the third boiler would leave the entire development without heating or hot water.
6. MLM appointed a specialist heating/boiler mechanical & electrical engineer to investigate the issue and to design a solution. The specialist advised that the plate exchangers to both boilers had failed and that the repair costs would be almost as much as the replacement cost.

7. The Applicant considers that to undertake a full section 20 consultation with two boilers not working and the real prospect of the third boiler failing would not be appropriate.
8. Whilst longer term solutions are being investigated the directors of the Applicant company have authorised temporary works to re-arrange the pipework so that – if the third boiler does fail – a temporary boiler can be installed fairly quickly. In the Applicant’s submission, the sooner a full solution is considered and implemented the lower the costs for leaseholders.
9. The Applicant has tried to include all leaseholders in the process by emailing them with an initial identification of the problem and then following this up with details of the current position and a section 20 notice of intention.
10. The Applicant has complied with the tribunal’s directions.

Responses from the Respondents

11. None of the Respondents has opposed the application or made any other representations.

The relevant legal provisions

12. Under Section 20(1) of the 1985 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 ... the appropriate tribunal”*.
13. Under Section 20ZA(1) of the 1985 Act *“where an application is made to the appropriate 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”*.

Tribunal’s decision

14. I note the Applicant’s rationale for applying for dispensation. Two of the boilers are not working and there is a real prospect of the third boiler failing. The loss of the third boiler would leave the entire development without heating or hot water.
15. I accept that the risk identified by the Applicant is a good reason for treating the works as urgent, and on the basis of the evidence provided I am satisfied that the works are indeed urgent.

16. As regards the steps taken by the Applicant to comply with the consultation requirements to the extent reasonably possible, the evidence indicates that it has taken such steps as could reasonably be expected in the circumstances. In addition, and importantly, none of the Respondents has opposed the application or made any other representations. There is also no evidence before us that any of the Respondents has been prejudiced by the failure to consult fully.
17. Therefore, I am satisfied that it is reasonable to dispense with the formal consultation requirements in respect of the qualifying works which are the subject of this application to the extent that those requirements have not already been complied with.
18. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works.

Name: Judge P Korn

Date: 2nd May 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.