FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LDC/2020/0016**
Property	**:**	**Basildon Court, 28 Devonshire Street, London W1G 6PP**
Applicant	**:**	**The Howard de Walden Estate**
Representative	**:**	**D & G Block Management Ltd**
Respondents	**:**	**Leaseholders of the 56 flats at the Property**
Representative	**:**	**None**
Type of Application	**:**	**S20ZA of the Landlord and Tenant Act 1985 - dispensation of consultation requirements**
Tribunal	**:**	**Mr. N. Martindale FRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**18 February 2020**

DECISION

Decision

1. **The Tribunal grants dispensation from the requirements on the Applicant to consult the Respondents under S.20ZA of the Landlord and Tenant Act 1985, in respect of the application.**

Background

2. The applicant, The Howard de Walden Estate, through its representative D & G Block Management Ltd. applied to the Tribunal under S.20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation from all or any of the consultation requirements contained in S.20 of the Act.

3. The application was dated 8 January 2020. The proposal was that a contract for provision of a replacement heating boiler (the second boiler) serving the Property. Its former condition had been such that it was unreliable. Consultation had been started earlier in 2019 as the applicant needed to be able to commence works immediately. It was not however completed prior to the works be undertaken.

Directions

4. Directions dated 17 January 2020 were issued by Tribunal Judge Simon Brilliant without an oral hearing. They provided for the Tribunal to determine the application during the week commencing 17 February 2020 and that if an oral hearing were requested by a party it had to by 27 January 2020. It was not requested.

5. They noted that a copy of the application had already provided by the applicant to each leaseholder.

6. Any leaseholders who opposed the application had, until 31 January 2020 to notify the Tribunal with any statement and supporting documentation. The landlord had until 6 February 2020 to provide 3 copies of the bundle to the Tribunal and 1 copy to each leaseholder.

Applicant's Case

7. The Property is described: *"…a mixed use development with 56 residential flats and a number of commercial units on the ground floor."* There being no evidence to the contrary, the Tribunal assumed that all the residential leases are in essentially the same form.

8. The application stated further in box 7 that the "Dispensation Sought" concerned "qualifying works", being a contract, where individual contributions sought would be in excess of £250 from each leaseholder.

9. The dispensation sought could be dealt with on paper as at box 9 and otherwise on 'fast track', box 10, though it was not described as urgent and no reason was given. The works had been completed before the application was made.

10. On page 8 of the Application and under "Grounds for Seeking Dispensation"; *"Install new boilers. New backup heating and hot water pumps to minimise service disruption in case of failure. Replace Boiler Controls Install water treatment to maintain water quality. New Gas Pipework to new boilers. Install a 'plate heat exchanger' between the boiler and the building circuit. Other associated work."*

11. The Applicant stated that; *"The Notice of Intention was served on 22 May 2019 and expired on 24 June 2019.* And further *"Quotes were obtained from three different contractors to replace one of the boilers but due to the uncertainties surrounding Brexit and the possible impact on boiler prices availability of parts, coupled with a minimum three week lead time required to source a new boiler, the board of directors decided to place an order for the second boiler rather than risk an outage in the peak of winter."*

12. Although the applicant had been said to have undertaken some consultation *"The Notice of Intention was served on 22 May and expired and 24 June 2019."*, the scope can only have been partial, or solely related to the work to the first boiler and/or other related equipment replacement, resulting in the need for this application.

13. 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.

Respondents' Case

14. Of the Respondent leaseholders the Tribunal did not receive any written responses in favour or against any aspect of the dispensation application.

Law

15. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works or where a contract is for a period in excess of 12 months. In such cases where timely consultation is inadequate or non-existent, only £250 or £100 respectively can be recovered from a tenant in respect of such works or long-term contracts unless the consultation requirements have either been complied with or dispensed with.

16. Dispensation is dealt with by S.20 ZA of the Act, which provides:- **"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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."**

17. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

(a)to each tenant; and
(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall –

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure
(e) specify-
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the period on which the relevant period ends.

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Decision

19. The scheme of the provisions is designed to protect the interests of tenants. Whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

20. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

21. This application is for dispensation from consultation of leaseholders over the selection and appointment of a contractor to the landlord for provision of a second boiler and associated works at the Property. The applicant complied with the Tribunal directions and the Tribunal received no response for or against the proposal. The reasons given by the applicant are brief but just sufficient. There was a complete absence of any objection from any leaseholder, to this application.

22. On this basis, 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 on this occasion.

24. It should be noted that in making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.

25. Such costs may be the subject of a separate challenge in a subsequent application brought by a leaseholder at a later date under S.27A of the Landlord and Tenant Act 1985.

N Martindale FRICS **18 February 2020**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).