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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2013/0640**
Property	:	**33 Grosvenor Square, London W1K 2HL**
Applicant Landlord	:	**32 Grosvenor Square Ltd**
Representative	:	**Mr Stockley, solicitor, Mr T Gibson, director, and Mr J New, engineer**
Respondent Tenants	:	**Various**
Representative	:	**Ms Devonshire (Flat 20) in person with her husband Mr Stream; no appearance from the other tenants**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge Adrian Jack, Professional Member Hugh Geddes**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**13th November 2013**

DECISION

Background

1. By an application received on 13th September 2013 the landlord sought the determination of the liability of the tenants for the replacement of the underfloor heating system. The Tribunal held a pre-hearing review on 8th October 2013, at which two tenants appeared as did the landlord. The Tribunal gave directions on that occasion. We take the following facts from the directions order. At the final hearing, no one disputed the facts set out in that directions order.

2. 32, 33 and 34 Grosvenor Square form one block. On the ground floor are restaurant premises conventionally called 34 Grosvenor Square. The residential flats are all conventionally called 33 Grosvenor Square. The block itself dates from the 1950's. There have been various changes to the flats by knocking some together, so the numbering is no longer consecutive.

3. The freehold is held by the Grosvenor Estate (an unlimited company). The current applicant landlord holds a 99 year lease from the feast of the birth of St John the Baptist 1958. Subsequently on a date which is not in evidence, but is probably about 1999, the Grosvenor Estate granted a 185 year lease to Grosvenor West End (also an unlimited company), which is the current reversioner to the 1958 lease.

4. After the grant of the 1958 lease, the flats were let on leases of about 60 years granted in the early 1960's. Most have been the subject of lease extensions or new leases. Flat 20, 33 Grosvenor Square is held by Ms Devonshire on a lease dated 5th March 2007 expiring on 21st June 2057.

5. Under Ms Devonshire's lease, she was required to enter a collateral service agreement whereby she as "the employer" employed the landlord as "the service company" to carry out the works which would normally be the task of the landlord qua landlord. All the leases of the other tenants had similar terms. The parties were agreed that, notwithstanding the somewhat unusual legal structure, the monies payable to the landlord qua service company were nonetheless service charges over which the Tribunal had jurisdiction.

6. When the block was built, electrical underfloor heating was installed. The wires were embedded in concrete over which in turn limestone flooring was laid. The underfloor heating has reached the end of its useful life. It has failed in Ms Devonshire's flat and is likely to fail in all the other flats over the next few years.

7. Replacing the existing underfloor system with a similar system requires digging up the limestone and concrete. This is messy and expensive. It has been described as Option A.

8. Another cheaper option would be to lay an underfloor system on top of the existing limestone and then cover the new underfloor system

(Option B). Yet another, even cheaper, option would be to install wall-mounted radiators (Option C).

9. The tenants who appeared at the pre-hearing review all wished for Option A to be done and argued that the terms of the leases make this obligatory. One tenant, who did not appear at the pre-hearing review, did not agree. The landlord's preferred option was Option B, but the landlord accepted that the tenants were entitled to insist on Option A.

10. The landlord has carried out stage one of the section 20 consultation in respect of Option A, but has not yet carried out stage two. It seeks a determination that in principle it is obliged to carry out Option A and can (subject to reasonableness) charge the cost to the tenants. All the tenants appearing at the pre-hearing review supported the landlord's application.

11. One tenant, Verdane Co Inc, the lessees of Flat 18, made representations pursuant to the Tribunal's directions. Its surveyor, Mr Benveniste FRICS, said that the cost of Option A was disproportionate. He said that Option B was much more cost-effective. He said that the heating in Flat 18 had already failed and the tenant had installed twenty-two electric panel heaters.

12. All the other tenants had rejected Option B when the landlord had consulted.

DISCUSSION

13. It is common ground that the landlord has a repairing obligation in respect of the existing underfloor system. There is in our judgment no basis under the terms of the leases whereby the existing heating system could be replaced by individual storage heaters (as in Option C). Another option discussed at the hearing was installing individual gas boilers. Although there are problems with running individual gas supplies and obtaining Building Regulation approval for gas boilers, this is likely to be the cheapest and best solution. However, since these options are not permissible under the leases, the landlord cannot adopt them.

14. Likewise Option B is not in our judgment permissible under the terms of the leases. Laying the new system on top of the existing flooring would encroach some two-thirds of an inch into the demise of each flat. This is not *de minimis* and in our judgment is also not permitted by the terms of the lease. We agree with Mr Benveniste's view that Option B is a cheaper option. It would be less disruptive as well. However, again since it is not permissible under the leases, the landlord cannot adopt it.

15. By a process of elimination, therefore, we find that the landlord is entitled to replace the current underfloor system with a replacement underfloor system of the same type, in other words Option A.

16. It may be that once the works are carried out to Ms Devonshire's flat, the other tenants will change their view, but at present with seventeen out of eighteen tenants in favour of replacement of the existing with the same, there appears to be no scope for an application being made to vary the terms of the leases.

17. The landlord was content that there be no order for costs.

DECISION

(a) It is reasonable for the landlord to incur the cost of removing and replacing the existing failed underfloor heating system in Flat 20, 33 Grosvenor Square, London W1K 2HL, including the replacement of the limestone flooring which will have to be removed to carry out the works.

(b) There be no order for costs.

Name: Adrian Jack **Date:** 13th November 2013