

10657



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

Case Reference : **MAN/00BS/LDC/2015/0007**

Property : **Alison Court, 4 Clifton Road, Heaton Moor,
Stockport SK4 4DD**

Applicant : **Swanturn Limited**

Represented by : **Realty Management Limited**

Respondents : **Leaseholders of apartments at the Property**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Laurence Bennett (Tribunal Judge)**

Date of Decision : **9 March 2015**

DECISION

Application

1. Realty Management Limited on behalf of Swanturn Limited applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of the replacement of the boiler at the Property.
2. The Respondents are Leaseholders of apartments at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 9th March 2015.
4. The Applicant is the Management Company, a party to the Leases of the apartments at the Property.
5. The Property is a purpose built block comprising 18 apartments.
6. The Applicant stated in the application form that the work is required to urgently rectify the only boiler providing heating and hot water to all 18 apartments at the Property.
7. The Boiler has been condemned by British Gas. Further information provided gives details of the problems and that the boiler has been condemned by British Gas. Copies of a gas safety warning notice and inspection notes have been provided.
8. The applicant states no formal consultation has been carried out save for a letter to each Leaseholder advising that this application would be made.
9. The Tribunal received confirmation from 16 leaseholders agreeing that dispensation be given. Neither the Applicant nor a Respondent requested a hearing.
10. The Tribunal convened without the parties to make its determination on 9th March 2015.

Law

11. Section 18 of the Act defines “service charge” and “relevant costs”.
12. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
13. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 - a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a leasehold valuation tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.

14. "The appropriate amount" is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as "..... an amount which results in the relevant contribution of any tenant being more than £250.00."
15. Section 20ZA(1) of the Act states:-
"Where an application is made to a 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 Conclusions with Reasons

16. The Tribunal considered the written evidence accompanying the application.
17. It is not necessary for the Tribunal to consider at this stage the extent of the service charges that would result from the works payable under the terms of the Respondents' leases. If and when such is demanded and if disputed, it may properly be the subject of a future application to the Tribunal.
18. The Tribunal accepts from the details of the work proposed and the obvious consequences of the boiler failure that it is necessary for it to be replaced without delay. The lack of provision and service has potential to impact on the health, safety, utility and comfort of occupiers and visitors to the apartments at the Property.
19. Noting the circumstances of obvious urgency this time of year The Tribunal is satisfied a determination should be made without further directions or process.
20. Although no form of consultation has taken place nor is there evidence that information has been given to the Respondents, the Tribunal has not identified a specific prejudice to them in the circumstances. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.
21. The Tribunal concludes it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
22. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

23. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.