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

Case reference : **LON/00BG/LDC/2018/0002**

Property : **East and West Towers, Pan Peninsula, 70 Marsh Wall, London E14 9HA**

Applicant : **Ballymore Millharbour Limited**

Representative : **Charles Russell Speechlys LLP**

Respondents : **The leaseholders at the East and West Towers**

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

Tribunal Member : **Judge N Hawkes
Mr D Jagger MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of paper determination : **22 February 2018**

DECISION

Background

1. The applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to the East and West Towers, Pan Peninsula, 70 Marsh Wall, London E14 9HA ("the Property").
2. The Tribunal has been informed that the Property is situated in an estate containing 760 residential flats, five commercial units, and a leisure centre. The Property comprises two towers; an East Tower and a West Tower.
3. The Tribunal has been informed that, historically, the East and West Towers have each housed four boilers which provide heating and hot water to the tenants.
4. The application is dated 28 December 2017 and the respondent lessees are listed in a schedule to the application.
5. Directions of the Tribunal were issued on 5 January 2018. The applicant has requested a paper determination.
6. No application has been made by any of the respondents for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 22 January 2018.
7. The Tribunal does not consider that an inspection of the Property would be of assistance, nor would it be proportionate to the issues in dispute.

The applicant's case

8. The applicant applies for dispensation from the requirements to consult leaseholders under section 20 of the 1985 Act in respect of work which has been carried out to replace two of the boilers serving the Property (this work is more fully described in the applicant's statement of case).
9. The applicant states that, between 28 October 2016 and 7 June 2017, each of the four boilers in the West Tower successively failed.
10. After three of the boilers had failed, a boiler was urgently moved from the East Tower to the West Tower. After the fourth of the original boilers had failed, only one operational boiler remained in the West Tower.
11. As a consequence, there was no back-up in the system in place. Further, one boiler was insufficient to meet the increased demand over the

winter months. The applicant therefore concluded that remedial work was urgently required.

12. Works were then carried out to replace two of the boilers in the West Tower, bringing the West Tower up to three working boilers. This addressed the problem of there being no immediate back-up in the system and ensured that the system would be able to sustain the demand for heating and hot water during the winter months. The work commenced on 7 September 2017 and was completed on 12 October 2017.
13. The applicant states that an explanation of the urgent need for the proposed work was given to lessees informally at a meeting of the Pan Peninsular Leaseholders and Residents Association on 11 September 2017.
14. A formal letter was subsequently sent to all leaseholders on 6 November 2017 explaining in detail that urgent works had been required and that carrying out a full consultation with leaseholders before instructing a contractor would have posed a significant risk in terms of prolonged service loss.
15. One response to this letter was received by email dated 9 November 2017 from a leaseholder who supported the course of action which had been adopted by the landlord. This leaseholder proposed that water filters be installed to prevent a future build-up of scale within the boilers and this suggestion is being considered by the applicant.

The respondents' case

16. 28 of the respondents have filed a reply form supporting the applicant's application. None of the respondents has filed a reply form and/or representations opposing the applicant's application and/or asserting that they have suffered prejudice as a consequence of the applicant's failure to consult.

The Tribunal's determination

17. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
18. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.

19. Section 20ZA of the 1985 Act provides that, where an application is made to the 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.

20. Having considered the application, the evidence in support, and the lack of any opposition and/or challenge to the applicant's account on the part of the respondents, we determine, pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it is reasonable in all the circumstances to dispense with the statutory consultation requirements in respect of the work described in the applicant's application dated 28 December 2017.

21. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

Judge Hawkes

Date 22 February 2018

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.