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

**Case Reference** : **LON/00AW/LDC/2018/0014**

**Property** : **Lincoln House, Basil Street,  
London SW13 1AN**

**Applicant** : **Lincoln House (Basil Street) Ltd**

**Respondent** : **The leaseholders**

**Type of Application** : **Dispensation from consultation  
requirements under Landlord and  
Tenant Act 1985 section 20ZA**

**Tribunal Members** : **Judge Professor R Percival  
Andrew Lewicki FRICS FCABE**

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

**Date of Decision** : **9 April 2018**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) grants dispensation from the consultation requirements in respect of the works the subject of the application.

## **Procedural**

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the replacement of two heating boilers. The application was allocated to the paper track.
2. The Tribunal gave directions on 5 February 2018, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 16 February 2018. No forms have been received.

## **The property and the works**

3. The property is a block of flats consisting of 48 private flats, with 2 porter’s apartments. It is a mansion block constructed around 1910, with a communal heating and hot water system serving all of the flats.
4. On 8 December 2017, one of two heating boilers serving the block failed. Repair of the boiler proved to be uneconomical due to the age of the installation. The remaining boiler was unable to provide satisfactory heating to the flats on its own. The applicant accordingly decided to replace both boilers with three new boilers. These units were installed between 21 and 28 December. The work cost £31,320 plus VAT. No alternative tenders were sought, as the applicant considered this impossible in circumstances of urgency that obtained.
5. The applicant is currently undertaking a large scale project to renew/replace the existing aged heating and hot water system, including pipework, in respect of which the applicant states that a section 20 consultation exercise is being undertaken. As part of this larger process, the two old boilers had been scheduled for replacement in the summer of 2018.

## **Determination**

6. We allow the application. In the first place, the works were clearly urgent – the breakdown of the heating boiler during a particularly cold winter.

7. Secondly, on the face of it the lessees will have suffered no financial prejudice as a result of what amounts to merely early replacement, by a matter of months, of the two boilers. The fact that no objections have been received means that no lessee is able to demonstrate any prejudice. As a result, we must allow the application: *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854.
8. This application relates solely with the granting of dispensation from undertaking the consultation process otherwise required by section 20 of the 1985 Act. If they consider the cost of the works to be excessive or if the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to the lessees to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

**Name:** Judge Richard Percival      **Date:** 9 April 2018

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20ZA**

- (1) 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.
- (2) In section 20 and this section—
  - “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.