LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 20ZA

LON/00AG/LDC/2007/0021

<u>Address:</u>

Acol Court Acol Road London NW6 3AE

3110

Applicants:

Acol Court Ltd Ringley Chartered Surveyors, agents

Respondents:

Various leaseholders

Tribunal Members:

Mr NK Nicol (Chairman) Mr DD Banfield FRICS Mr B Collins FRICS

- 1. The Applicants have applied for dispensation from the statutory consultation requirements in accordance with s.20ZA of the Landlord and Tenant Act 1985. In accordance with the Tribunal's directions, the Tribunal has determined the matter on the papers without a hearing on the basis set out below.
- 2. The Respondents are leaseholders of several flats at Acol Court, Acol Road, London NW6 3AE. The first Applicant is the management company owned by all but two of the leaseholders of the 40 flats and the second Applicant is its agent. The leases provide for payment of service charges (clause 4(2)(b)), including the cost of the first Applicant's compliance with its obligation (under clause 5(8) and (9)) to maintain the supply of hot water and the central heating.
- 3. On 8th January 2007 HH Abbs & Co, the Applicants' usual heating contractor, advised that the communal boiler system needed urgent attention. The following day, they distributed a notice which read as follows:-

Emergency Urgent Please Read

Acol Court's boiler has cracked and is leaking. It must be replaced as an emergency major work. Because several of the replacement parts have to be made specially for the block, it will take 4 weeks for the parts to arrive. It will then take 2 more weeks for the installation work to be done.

The pressure is dropping. Residents on the upper floors will have already noticed the loss of heat. The system is draining out. Gradually, the rest of

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the block will lose heat. At some point, we will also lose hot water. The Board have consulted our service engineers about the work and how long the boiler will last. The engineers cannot predict. The boiler could suffer a major rupture at any time. If it does, it would have to be immediately shut down. The progression is unpredictable.

- 4. The Applicants arranged for a temporary hot water system to be put in place, although it was relatively expensive at £5,000 per month. In the circumstances, they felt they had no choice but to proceed to emergency works. They obtained quotes from HH Abbs & Co for £37,000 and from Griffin & Hall Ltd for £99,156. In February 2007 they appointed HH Abbs & Co to strip out the existing boiler and three cylinders and replace them with two boilers and two fast recovery indirect hot water storage cylinders.
- 5. By a further notice dated 3rd February 2007 the Applicants sought to notify the leaseholders that they had instructed HH Abbs & Co to carry out the works. On 10th February 2007 they posted up the timetable. However, it was not until 9th March 2007 that the Applicants took any steps to comply with the formal consultation requirements of s.20 of the Landlord and Tenant Act 1985 when they sent out simultaneously a notice of intention to carry out works and the statement of estimates. The notice invited comments although it was effectively too late to influence events. On 11th March 2007 the Applicants posted a notice saying the new system would become operational on 2nd or 3rd April 2007. Another notice on 3rd April 2007 said the boilers had been commissioned and would become operational the following day.
- 6. Under s.20 of the Landlord and Tenant Act 1985 service charges arising from such works must be limited unless certain consultation requirements are complied with. Under s.20ZA(1), the Tribunal may dispense with those consultation requirements if they consider it reasonable to do so. In this case, the Respondents object to such dispensation.
- 7. The Respondents assert that the application should be struck out for failure to comply with the Tribunal's procedural requirements. Firstly, they point out that the application was not verified by a statement of truth, as required by reg.3(1)(e) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, in that there was no signature in the relevant box on the application form. However, under reg.3(8) the Tribunal may dispense with this requirement if the particulars and documents included with an application are sufficient to enable the application to be determined and no prejudice will, or is likely to, be caused to any party. Although the failure to provide a statement of truth is a serious defect, the Tribunal is satisfied that the conditions in reg.3(8) are met and the defect may be overlooked in the circumstances of this case.
- 8. The Respondents also assert that the Applicants have failed to provide certain documents in accordance with the Tribunal's directions. It is not clear what it is alleged has been missed out since, as mentioned above, the Tribunal is satisfied that they have sufficient material to determine the application. Therefore, the Tribunal is further satisfied that there are no grounds to strike out the application.

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The Respondents point out that the first Applicant has sufficient money in reserve and can pay for the boiler works from that rather than the service charge. In fact, the Respondents have misunderstood the applicable law. The reserve fund is not the Applicant company's money as such. Rather, they hold it on trust for the benefit of the service charge payers, to be applied towards the relevant costs which make up the service charges. The Tribunal's determination of the current application will have absolutely nothing to say about whether the cost of the boiler works should be met from the reserve fund, from further service charges or from a The Tribunal is determining whether consultation combination of the two. requirements should be dispensed with which, in turn, will determine whether the relevant costs are limited to £250 per leaseholder or not. Those relevant costs may then be met from the reserve fund or further service charges as the Applicants decide. If the Tribunal fails to dispense with the consultation requirements, the Applicants will no more be entitled to defray the cost from the reserve fund than from further service charges.

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- 10. The Respondents point out that the Applicants could have carried out more extensive consultation sooner than they did. However, they also appear to concede that the Applicants could not have complied with the statutory requirements entirely. Even a mere abridgement of time for the statutory notices would have required the Applicants to seek dispensation in the same way as they have done now. The Tribunal agrees that the Applicants could have done more, but it would be a counsel of perfection to criticise them for not having done so. The circumstances were clearly urgent and the statutory requirements could not reasonably have been complied with in any event. It would appear that the notices which were put up were not far short of the best the Applicants could do in the circumstances.
- 11. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements and grants the application.

Mr N.K. Nicol

Date: 1st May 2007