



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

Case reference : LON/00AW/LDC/2016/0047

Property : 4 – 6 Lennox Gardens, London
SW1X 0DG

Applicant : The Wellcome Trust Ltd (as
trustees of the Wellcome Trust)

Representative : Knight Frank LLP through Mr
Coddington and Mr Rajabally

Respondent : The leaseholders as set out on the
schedule attached to the
Application

Representative : Not known

Type of application : To dispense with the requirement
to consult lessees (s20ZA Landlord
and Tenant Act 1985)

Tribunal members : Tribunal Judge Dutton
Mr C P Gowman MCIEH MCMI BSc

Date of decision : 15th June 2016

:

DECISION

DECISION

We determine that dispensation should be given from all or part of the consultation requirements in respect of the asbestos removal and containment works required under s20 of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The application states that an asbestos re-inspection in September 2015 highlighted the existence of asbestos in the loft/roof void, in which the cold water tank and lift machinery was housed. Dispensation is being sought in relation to the works required to deal with the asbestos removal and encapsulation to thus enable works to be undertaken to deal with the replacement of the water tank and servicing of the lift machinery to put the lift back into commission. The works have been undertaken and were concluded on 27th May 2016. The lift is now functioning.
3. Directions were issued dated 12th May 2016 including a questionnaire to be returned by each leaseholder indicating whether they supported the application or objected to same. At the time of our determination there do not appear to have been any objections. At the hearing today Mr Coddington confirmed that no objections had been notified to Knight Frank (KF)
4. Submissions were lodged on behalf of the Applicant by its managing agents KF and included in the hearing bundle at page 20. We noted all that was said. We also had the benefit of a report from Environtec Limited dated September 2015. The matter came before us for hearing on 15th June 2016

Hearing

5. It appears from the statement produced by KF that the asbestos issue came to light as long ago as September 2015. We were told by Mr Coddington that there had been a delay in implementing works as KF were waiting for the tenants living on the top floor of the building to vacate without the need for alternative accommodation to be found. This did not happen until recently. Quotes were obtained, as set out in the bundle, the lowest, and the accepted contractor, being European Asbestos Services Limited. They had been recommended following a detailed survey carried out by Environtec Limited as referred to above.
6. Mr Coddington accepted that given the passage of time, and the fact that consultation had been undertaken to deal with the water tank replacement, that this was perhaps a case where the consultation process could have been followed.

¹ See **Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

7. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the asbestos work. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

8. We have considered the papers lodged by KF on behalf of the Applicant, the directions issued by this Tribunal and the representations made to us at the hearing. There is no objection raised by the Respondents, either together or singularly. It seems clear from the papers that these works were required to facilitate other works. The Applicant has proceeded with the lowest quote received. There is no evidence of any prejudice having been suffered by any tenant. That is not to say that we are wholly comfortable with such a dispensation application being made in these circumstances. We would not wish KF, or indeed any other Landlord/agent to consider that the provisions of section 20 can just be circumvented willy nilly. We take heart from the fact that consultation was sought for the water tank replacement.
9. In the circumstances, given the explanation as to re-housing delaying the matter and the clear need for the works to be undertaken that it is appropriate to dispense with the consultation requirements in this case relating to the asbestos removal works. Our decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish under the provisions of s27A of the Landlord and Tenant Act 1985.

Andrew Dutton

Tribunal Judge

Andrew Dutton

15th June 2016

The relevant law

Section 20 of the Act

- (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) a leasehold valuation 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.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).