



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

Case Reference : LON/00AW/LDC/2015/0067

Property : Kent & Kensington House

Applicant : Kent and Kensington Houses Ltd
(the landlord)

Representative : RMG, managing agents

Respondents : Leaseholders as listed in the
schedule to the application

Representative : None

Type of Application : For dispensation of the
consultation requirements under
section 20ZA

Judge : Sonya O'Sullivan

Date of Decision : 18 June 2015

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The property concerned is described in the application as a late 1800s four storey purpose built block comprising 31 units known as Kensington & Kent House, 34-35 Kensington Court, London W8 5BE (the “Property”) and the application is made against the various leaseholders set out in the list attached to the application (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant seeks dispensation in respect of qualifying works in relation to the cost of asbestos removal and containment works. The work is considered urgent as the asbestos materials are said to be high risk. In addition the two lifts have been decommissioned which is an issue as a number of elderly leaseholders live in the Property.

The background

4. The application was dated 21 May 2015. Directions were made dated 1 June 2015 which provided for the Respondents to indicate whether they consented to the application and wished to have a hearing.
5. As none of the parties requested an oral hearing this matter was considered by way of a paper determination on 18 June 2015.
6. The Tribunal did not consider that an inspection was necessary given the nature of the works in question, nor would it have been proportionate to the issues in dispute.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant’s case

8. The Applicant had filed a bundle in accordance with the directions.
9. The background to this matter is set out in a letter from Clearway Environmental dated 18 May 2015. This confirms that during a recent pre refurbishment survey a high number of asbestos materials were found within the lofts and lift space and these were in the form of high risk loose asbestos debris and dust. The asbestos found is in the form of asbestos pipe insulation debris and also damaged asbestos pipe

insulation to various pipes. The debris found in the lift shafts was high risk. Given the condition and type of asbestos it was recommended that the area be sealed off with all access restricted until such time as remedial works could be undertaken to reduce the high risk.

10. The Applicant was then informed on 15 May 2015 by the Environmental Health Department at Kensington and Chelsea that a resident of Kensington House had removed the damaged pipe work within Kent House thus causing significant asbestos contamination to the stairwell of Kent House and at least two flats which are accessed via that stairwell. The stairwell had to be evacuated to allow the asbestos to be removed and these works have taken place. Asbestos contamination within the loft and further contamination caused by the disturbance remain a priority. The lifts are currently shut down to prevent further contamination as the lofts are connected directly to the lift shafts.
11. A notice of intention was originally served in relation to asbestos containment and removal works on 20 August 2013. However given the unauthorised attempted removal of some of the asbestos material the Applicant considered it needed to carry out the works urgently and thus made this application.
12. By letter dated 15 June 2015 RMG for the Applicant confirmed that by 4 June 2015 copies of the application were sent to the leaseholders and displayed in the common parts.

The Respondents' position

13. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. None of the leaseholders served any statements of case save for Mr Kent, the leaseholder of Flat 4 and thus the tribunal concluded that the application was unopposed by the majority of the leaseholders.
14. Mr Kent set out his opposition to the application in an email dated 9 June 2015. He questioned whether as he owned a share of the freehold of the Property he was entitled to receive more information; he did not set out what this might be. He also went on to question why a section 20 consultation had not been completed some two and a half years ago and included in the common parts refurbishment in November 2012 given the presence of asbestos was known at this time.

The Tribunal's decision

15. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works to carry out the asbestos removal and containment at the Property as set out in the specification of Clearway Environmental contained in the bundle.

Reasons for the Tribunal's decision

16. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
17. The application was opposed by only one leaseholder. The tribunal is satisfied that the works were urgently required and that it is appropriate to grant an order for dispensation in these circumstances.
18. Mr Kent's opposition was made on the basis that the presence of asbestos was known some two and a half years earlier and these works could have been included in the common parts refurbishment at that time. Although the presence of asbestos may have been noted it is often the case that it is then monitored and it may not always require removal. In any event the tribunal notes that the Applicant had planned these works and indeed had served a Notice of Intention in 2013. The tribunal accepts the Applicant's evidence that the recent removal attempts made by a leaseholder have exacerbated the problem and meant that the lift shafts have had to be shut down and that there are serious contamination issues which require remedying. It therefore considers it reasonable to grant dispensation in these circumstances. The tribunal considers that Mr Kent was given sufficient information in relation to the works.
19. In granting dispensation the tribunal is not making any judgement in respect of the reasonableness of the costs of the works which may be subsequently challenged by way of an application under section 27A of the 1985 Act. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Application under s.20C

20. There was no application for any order under section 20C before the tribunal.

Name: S O'Sullivan

Date: 18 June 2015