



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

Case Reference : **BIR/00CN/LDC/2022/0025**

Property : **Ingoldsby Court, 68 Wake Green Road,
Moseley, Birmingham, B13 9PT**

Applicant : **Ingoldsby Court Management Company
Limited**

Representative : **Inspire Property Management Limited**

Respondents : **The residential long leaseholders of
Ingoldsby Court**

Type of Application : **Application under section 20ZA of the
Landlord and Tenant Act 1985 to dispense
with consultation requirements in respect
of qualifying works**

Tribunal Members : **Judge M K Gandham
Mr I D Humphries BSc (EstMan) FRICS**

**Date of Hearing
Hearing** : **Paper Determination**

Date of Decision : **07 September 2022**

DECISION

Decision

1. The Tribunal determines that it is reasonable to dispense with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in relation to the removal, cleaning or encapsulation of any asbestos or redundant plant equipment in the cellar to the Property in order to allow fire stopping and rewiring works to proceed, subject to such removal, cleaning or encapsulation of the asbestos being carried out by a fully accredited asbestos contractor.

Reasons for Decision

Introduction

2. On 25 July 2022, the Tribunal received an application from Ingoldsby Court Management Company Limited ('the Applicant') under Section 20ZA of the Landlord and Tenant Act 1985 ('the Act'), for dispensation from the consultation requirements contained in Section 20 of the Act for works to be carried out at Ingoldsby Court, 68 Wake Green Road, Moseley, Birmingham, B13 9PT ('the Property').
3. The application related to the discovery of asbestos in the cellar, whilst fire stopping and rewiring works to the Property were due to commence. The application stated that these essential works could not be carried out until the asbestos issue could be resolved.
4. A Directions Order was issued on 28 July 2022 requiring the Applicant to forward to each of the residential leaseholders ('the Respondents') a copy of the application and a copy of the Directions Order, which included a form for the Respondents to indicate whether or not they supported the application.
5. The Property comprised ten residential flats. The Tribunal received eight completed forms, all of which supported the application and also confirmed that the Tribunal could decide the matter without an oral hearing. No replies were received from the other two leaseholders.
6. As neither party had requested a hearing and no objections or submissions to the application had been received from any of the Respondents, the matter was decided on the papers without an inspection.
7. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements, under section 20ZA of the Act. **This Application does not concern the issue of whether any service charge costs are reasonable or payable and the Respondents will continue to enjoy the protection of section 27A of the Act.**

Grounds for the Application

8. The Property was described in the application form as a large residential property, built circa. 1898, with later additions in circa. 1974, the freehold of which was held by the Applicant. The application form also confirmed that the Respondents were all shareholders of the Applicant company, nine of whom were also directors of the company.
9. The Applicant confirmed that the Property was in need of fire stopping and rewiring works, following a Fire Risk Assessment of the Property and a failed electrical test. The Applicant stated that a section 20 consultation process had been conducted in respect of these works but that they could not proceed as asbestos had been discovered in the cellar, in which the Respondents' electricity meters were located.
10. The Applicant stated that additional works were now required – involving the cleaning and encapsulating of the cellar walls and the possible removal of redundant plant equipment from the cellar – and that these additional works were qualifying works.
11. The Applicant confirmed that the qualifying works had not yet been commenced but that all of the Respondents had been made aware of the asbestos issue and that a full meeting of residents had been held on 20 July 2022.

The Law

12. Section 18 of the Act defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred.

Section 20 details consultation requirements and section 20(1) provides:

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... 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.

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by First-tier Tribunal (Property Chamber).

The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These, amongst other things, require the landlord to serve

on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord's proposals.

Section 20ZA of the Act provides:

(1) Where an application is made to the appropriate 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...

Therefore, section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements “*if satisfied that it is reasonable*” to do so.

The Lease

13. Inspire Property Management Limited, the Applicant's managing agent, had provided a copy of a lease to Flat 8 Ingoldsby Court to the Tribunal (with the application form), which they stated was a generic lease.
14. The lessee under clause 2(2) of the lease covenants to pay, as service charge, a proportionate part of the expenses and outgoings incurred by the lessor as set out in the Fifth Schedule to the lease. Under paragraph 2 of the Fifth Schedule, this includes the lessor's obligations under clause 4(5) of the lease.
15. Under clause 4(5) of the lease, the lessor covenants as follows:

“5 (a) That the Lessor will maintain and keep in good and substantial repair and condition

(i) the roof main walls floors foundations and structure of the building

(ii) all such main gas and water pipes and drains and electric cables and wires serving the Building and not forming part of any particular Flat being such as used by the Lessee in Common [sic] with the owners or lessees of the other flats”.

The Tribunal's Deliberations

16. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the section 20 consultation requirements required under the Act.
17. Section 20ZA confirms that a tribunal may make a determination to dispense with all or any of the consultation requirements if it is satisfied that it is “reasonable” to dispense with the same.

18. The leading authority for the way in which the Tribunal should approach this question was considered in the decision of the Supreme Court in *Daejan Investment Limited v Benson et al* [2013] UKSC 14, which determined (amongst other things) that the correct approach was to consider the extent to which the tenants might be prejudiced by a lack of consultation. In considering that issue, the legal burden of proof rests with the applicant, but the factual burden of identifying some relevant prejudice rests with the respondent. Relevant prejudice refers to a disadvantage that the respondent would not have suffered had the consultation requirements been fully complied with.
19. The Tribunal noted that the Applicant had completed a section 20 consultation process in respect of the fire and electrical works and that these works had been halted due to the discovery of asbestos at the Property. The Tribunal considered that the fire and electrical works appeared essential for the safety of the occupiers, based on the Applicant's statement that they were the result of a Fire Risk Assessment and a failed electrical test. Accordingly, the Tribunal considered that any further delay due to the discovery of asbestos should be avoided and that it was, therefore, reasonable for the Applicant to apply for dispensation under section 20 in relation to dealing with the asbestos, in order that the fire and rewiring works could proceed.
20. In relation to any prejudice to the Respondents by the failure of the Applicant to comply with the consultation requirements, the Tribunal noted that the Respondents were all shareholders in the Applicant company, that none of the Respondents had raised any objection to the application and that eight of the ten Respondents had supported the application for dispensation. Accordingly, the Tribunal found that there was no evidence that the Respondents would be prejudiced by the lack of consultation.
21. Consequently, the Tribunal considers it is reasonable to dispense with the consultation requirements with regard to dealing with the asbestos discovered at the Property, subject to any such works being carried out by a suitably qualified contractor.

Appeal

22. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham