



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

Case reference : **LON/00AW/LDC/2021/0118**

HMCTS Code : **P: Paper remote**

Property : **1-7 Onslow Square, London SW7 3NJ**

Applicant : **The Wellcome Trust Limited**

Representative : **Savills (UK) Ltd – Paige Bonta**

Respondents : **The Leaseholders**

Representative : **In person**

Type of application : **For dispensation under section 20ZA of
the Landlord & Tenant Act 1985**

Tribunal member : **Tribunal Judge I Mohabir**

Date of decision : **31 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
2. 1-7 Onslow Square, London SW7 3NJ (“the property”) is a masonry/brick built building that has been converted into 10 leasehold residential flats. The Applicant is the landlord and the lessees are the tenants under the leases granted for the flats.
3. It is the Applicant’s case that the asbestos maintenance contractor, Envirotec, discovered exposed asbestos in the boiler room during routine monitoring. As a result it could not maintain the boiler room and the water tank serving the property.
4. Envirotec prepared an estimate dated 23 February 2021 containing two options for the removal of the asbestos. The first option involved polythene covering to the walls, which would take 6 days to complete at an estimated cost of £14,200 excluding VAT.
5. The second option involved the provision of asbestos removal team, plant, equipment and materials to conduct the removal and disposal of asbestos insulation residue to walls and ceiling within basement plant room by scrapping all surfaces using hand tools only, followed by the encapsulation of walls and ceiling utilising ET-150 applied with hand brushes and rollers.
6. The Applicant adopted the second option and proceeded to have the works carried out without first carrying out statutory consultation with the leaseholders pursuant to section 20 of the Act. The reason given for doing so was the increased risk of harm to the leaseholders by the delay caused if consultation was carried out.
7. Consequently, by an application dated 23 April 2021, the Applicant made this application for retrospective dispensation from the requirement to carry out statutory consultation.
8. On 17 June 2021, the Tribunal issued Directions and directed the Applicant to serve each of the lessees a copy of the application and a statement of the reasons for making it. The lessees were directed to respond to the application stating whether they objected to it in any way.

The Tribunal also directed that this application be determined on the basis of written representations only.

9. So far as the Tribunal is aware, none of the lessees have objected to the application.

Relevant Law

10. This is set out in the Appendix annexed hereto.

Decision

11. The determination of the application took place on 31 May 2022 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the Applicant.
12. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
13. The issue before the Tribunal was whether dispensation, retrospectively or otherwise, should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the works to prevent further water ingress. In this application, the Tribunal is not concerned about the actual or estimated cost that has been incurred.
14. The Tribunal granted the application the following reasons:
 - (a) the Tribunal was satisfied that the presence of exposed asbestos in the boiler room, which apparently included the water tank posed a potentially significant health and safety hazard to the occupiers and were, therefore urgent in nature.
 - (b) the Tribunal was satisfied that the lessees were informed of the presence of asbestos and the need to carry out the removal of it on an urgent basis. The Tribunal was also satisfied that if the Applicant had carried out statutory consultation, it is possible that the health and safety of the occupants in the building would be significantly prejudiced by the potential failure of the boiler and/or water supply to the building and the inability of a contractor to carry out remedial works because of the presence of the asbestos.
 - (c) the Tribunal was satisfied that the lessees have been served with the application and the evidence in support and there has been no objection from any of them.

- (d) importantly, the real prejudice to the lessees would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual or estimated costs incurred and they have done so by making the parallel service charge application under section 27A of the Act.
15. The Tribunal, therefore, concluded that the lessees were not be prejudiced by the Applicant's failure to consult and the application was granted as sought.
16. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I
Mohabir

Date: 31 May 2022

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).

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.