



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

Case Reference : **LON/00BK/LDC/2021/0311**

Property : **167-173 Sussex Gardens, London
W2**

Applicant : **The Wellcome Trust Limited**

Representative : **Mr David Morton, Property
Manager, Savills (UK) Limited**

Respondent : **The long leaseholders listed in the
schedule to the application form**

Representative : **No appearance**

Type of Application : **Application for dispensation under
s.20ZA of the Landlord and Tenant
Act 1985**

Tribunal Members : **Judge W Hansen (chairman)**

**Date and venue of
Hearing** : **14th March 2022 (Paper
Determination)**

Date of Decision : **14th March 2022**

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that the consultation requirements in relation to roof repairs at 167-173 Sussex Gardens, London W2 (including the erecting and dismantling of a scaffolding tower) be dispensed with on terms that the costs incurred in relation to this application for dispensation shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants;
- (2) The Tribunal records that this is not a determination in relation to the reasonableness of the costs of the said works.

The Application

1. By an application dated 26 November 2021 the Applicant seeks a dispensation order under section 20ZA(1) of the Landlord and Tenant Act 1985. The Applicant is the freehold owner of 167-173 Sussex Gardens, London W2 (“the Property”). The Property comprises three converted Georgian house now comprising 14 flats over 5 stories with a slate covered mansard roof. The Respondents are the long leaseholders.
2. The application relates to roof repairs required following the discovery (on 7 October 2021) of water ingress to the top floor of the communal hallway of 171 Sussex Gardens. In order to gain access to the roof it was necessary to erect a scaffolding tower. The total costs incurred in relation to the repairs and the erection and dismantling of a scaffolding tower were £7,380 inclusive of VAT.
3. The brief facts are these. An inspection of the Property was carried out on 7 October 2021. This revealed a problem with water ingress to the top floor of the communal hallway at 171 Sussex Gardens. Due to the location of the problem, and the lack of ready access to the roof, it was identified that a scaffold would be necessary to investigate and carry out any necessary repairs. Two quotes were obtained, one for £7,380 from N-Compass and one for £9,216. Both quotes were inclusive of VAT. The cheapest quotation was accepted.

4. Forward funding was provided by the freeholder to allow the repairs to begin without delay. The scaffolding was erected on 3 December 2021. With the scaffolding in place, asphalt repairs were made to the roof directly above the point of ingress and a rainwater gully was cleared of leaves and debris. The resultant invoice was for £7,380 as quoted. The lion's share of these costs related to the scaffolding (£5,250 + VAT).
5. The lessees were given the opportunity to respond to and/or object to this application but none have done so. It is therefore unopposed. Nonetheless, I must still consider whether it is reasonable to dispense with the consultation requirements.
6. I am entirely satisfied that it is reasonable. The roof was leaking and urgently required repair. A scaffold was required to inspect the roof and effect the repairs. Further delay would have led to further damage and increased remedial costs for repair works, as well as creating the risk of plaster falling from the ceiling of the common parts onto residents or visitors to the Property. No prejudice has been identified by the lessees and I am satisfied there is none.
7. I therefore dispense with the consultation requirements in relation to these works, but on terms that the cost of this application is not passed on to the tenants via the service charge. A dispensation on these terms is usual following *Daejan v. Benson* [2013] 1 WLR 854 and I consider it appropriate on the facts of this case.
8. For the avoidance of doubt, this determination relates only to the issue of dispensation and is not a determination in relation to the reasonableness of the costs of the said works.

Name: Judge W Hansen

Date: 14 March 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).