



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

Case reference : **LON/00AG/LDC/2019/0163**

Property : **76 Canfield Gardens, London NW6
3ED**

Applicant : **Property Actually Limited**

Representative : **None**

Respondents : **Flat 1: Mr Gavin Steven Da Cunha &
Ms Tulika Sahai
Flat 3: Mr Austin Higgins
Flat 4: Mr Leo Rom
Flat 5: Mr Stephen Robert Christy &
Mr Toong Hoy Ow
Flat 6: Ms Joanna Clare Sherlock**

Representative : **None**

Type of Application : **Dispensation with statutory
consultation requirements under
s.20ZA Landlord & Tenant Act 1985**

Tribunal member(s) : **Judge N Rushton QC BA(Law) LLM
Mr D Jagger MRICS**

**Date and venue of
hearing** : **11 November 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **11 November 2019**

DECISION

Decision of the tribunal

- (1) Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.

The application

1. The Applicant is the managing agent on behalf of the landlord, 76 Canfield Gardens Limited, in respect of 5 flats at 76 Canfield Gardens, London NW6 3ED (“the Property”). The Respondents are the leaseholders. The directors of the landlord are two of the leaseholders, Stephen Christy and Joanna Sherlock.
2. The Applicant seeks dispensation pursuant to Section 20ZA of the Landlord & Tenant Act 1985 (“the Act”) in respect of consultation requirements in relation to certain “Qualifying Works” (within the meaning of the Act).
3. The Qualifying Works comprise the removal of asbestos insulation board ceiling in the basement of the Property, together with asbestos insulation board debris in the undercroft in the basement. The works have already been carried out and a Certificate of Reoccupation Report was issued on 18 October 2019.

Paper determination

4. The Application is dated 13 September 2019 and was received by the Tribunal on 16 September 2019. Directions were issued on 9 October 2019 which among other things required the Applicant to send each of the leaseholders copies of the application form and the directions and to display a copy of the same in a prominent place in the common parts of the Property. By a letter of 17 October 2019 received by the Tribunal on 22 October 2019, Anna Petani of the Applicant confirmed this had been done. The Tribunal also sent a copy of the application and enclosed documents to each of the leaseholders by first class post to the flat addresses, on 2 October 2019 (copies on the Tribunal’s file).
5. The directions provided that any leaseholders who opposed the application for dispensation should respond on the reply form and send a statement in response with any documents relied on by 23 October 2019. No responses and no objections have been submitted by the Respondents.
6. The directions provided that the Tribunal would determine the application on the basis of written representations unless any request for an oral hearing was received by 19 October 2019. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant. This included a bundle containing the application, directions and copy lease which was emailed by the Applicant on 30 October 2019 and which has been received by the Tribunal.

7. The directions state expressly that the Application only concerns whether it is reasonable to dispense with the statutory consultation requirements and does not concern the issue of whether any service charge costs resulting from the works are reasonable or payable.

The law

8. Section 20ZA of the Act, subsection (1) provides as follows:

'Where an application is made to a 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.'

9. The Supreme Court in the case of *Daejan Investments v Benson and others* [2013] UKSC 14 set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of section 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements'*.

Findings of fact

10. The Application gives the following reasons for seeking dispensation: asbestos had been found in the cellar of the Property. Upon testing the asbestos was determined to be of a dangerous type and it had been disturbed, therefore posing a health risk. It needed to be removed as a matter of urgency. The cellar contains gas and electric meters for all the flats, the boiler for one flat and a drainage pump for the building. Regular access to the cellar was needed but until the asbestos had been removed, it would have been dangerous for anyone to enter the cellar.
11. The bundle includes an Asbestos Refurbishment and Demolition Inspection Report from Environmental Solutions Limited dated 20 August 2019. This advised that there was an asbestos insulation board ceiling in the basement and asbestos insulation board debris throughout the undercroft in the basement. It was in very bad condition and had the potential to release asbestos fibres into the air. The area required sealing off with only trained operatives wearing the right PPE to be allowed to enter. All the asbestos needed to be removed as soon as possible as it was a health hazard.

12. The managing agent obtained 6 quotes for the works (some incomplete), which were sent to the directors of the landlord on 23 September 2019 (email in the bundle). The contractors all advised removal of the ceiling boards and sealing off of the undercroft. The contractor selected was Blue A Limited, who quoted £9,024 including fitting a new ceiling and painting. On the face of it this was the lowest quote then available of those who also would do reinstatement works.
13. The bundle includes a Certificate of Reoccupation Report from Blue A Limited dated 18 October 2019 which sets out the 4 stages of the works carried out and confirms that the basement area is now safe to enter. Also included is a copy of the notification to the HSE dated 17 October 2019 confirming that the work has been completed.
14. The bundle also includes a sample of the service charge demand dated 30 September 2019 said to have been sent to all the leaseholders, which included a separate demand for share of the asbestos works of £1,537.33 per flat. It was said in the letter accompanying the demand that the total cost of those works was estimated at £9,877.44 and that Blue A Limited's quote was the lowest and included HSE notification and basic ceiling reinstatement. The overall cost included making an application for s.20 dispensation, as well as the managing agent's fee. Also included in the bundle is the contractor's invoice which was for a total of £6,670 plus VAT for all the works, or £8,004 including VAT.
15. The Tribunal is satisfied on the basis of the statements in the Application and the Reports in the bundle, and in the absence of any representations from the leaseholders, that the Qualifying Works were of a nature which was necessary and urgent, having regard to the risk to health if they were not urgently carried out and the need for the leaseholders and others to access the basement.
16. In the absence of any submission from any Respondent objecting to the works, the Tribunal found no evidence that the Respondents would suffer prejudice if dispensation were to be granted.

Determination

17. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Dispensation is granted pursuant to section 20ZA of the Landlord & Tenant Act 1985.
18. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.

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).