



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

Case Reference : LON/00AW/LDC/2020/0129P

Property : 16 Egerton Gardens London SW3 2DG

Applicant : The Wellcome Trust Limited

Representative : Savills (UK) Ltd

Respondents : See attached schedule of lessees

Representative : None

Type of Application : Dispensation from consultation requirements under section 20ZA
Landlord and Tenant Act 1985 (“the Act”)

Tribunal Member : Mr Charles Norman FRICS
Valuer Chairman

Date of Decision : 24 November 2020

Determination by Written Representations

DECISION

Decision

1. The application for dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the invoice set out in Paragraph 2 below is **GRANTED**.
2. The invoice is as follows:

11 August 2020	Foxley's Fabric & Building Maintenance	£2220
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Reasons

Background

3. This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was PAPERREMOTE. A face to face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 62 pages the contents of which the Tribunal has noted. The Decision made is set out at Paragraphs 1 and 2 above.
4. Application to the Tribunal was made on 11 August 2020 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") (set out in the appendix).
5. Directions were issued on 8 September 2020. The Directions set the matter down for determination by written representations, unless any party made a request for an oral hearing, which none did. The Directions required the applicant to send each of the leaseholders a copy of the application form, the directions and the invoice substantiating the cost of the work by 5 October 2020 and to give publicity to the application in the block, evidence of which was provided to the Tribunal. In addition, the respondents were invited to respond to the application.
6. The Tribunal did not consider that an inspection of the property was necessary.

The Property

7. The property is described as a masonry/brick building built in the early 1900s and converted into seven flats.

The Respondents' leases

8. A sample lease of Flat 1 was supplied, dated 17 July 2017 by which a term expiring in 2195 was granted by the applicant. Clause 4.6 imposes an obligation to pay service charges in the manner provided in schedule 5. This in turn refers to costs incurred by the landlord under clause 5.2. Clause 5.2.1 imposes an obligation upon the landlord "To maintain and keep in good and substantial repair and keep in good and substantial condition the main structure of the building including... drains gutters and rainwater pipes..."
9. The basis of the application as expanded by a statement from Mr David Morton, Property Manager, Savills, was as follows: "*During an inspection on 31 July 2020 of the property it was noted by one of our valuation team that a downpipe on the side of the building had become detached from the wall [...] As the loose downpipe was located beside a public footpath, it was deemed that it would be unsafe to delay the repair is required to secure the pipe to the wall. To scaffold the area in order to access the loose fixing at the second floor level would have required a scaffold licence being granted by the Royal Borough of Kensington and Chelsea as it would have meant closing a section of the footpath. Accordingly it was established that a mobile elevated working platform would be more appropriate. A general building contractor (Foxleys) were instructed on 31 July 2020 to undertake the works from a MEWP as soon as possible. Works... were completed on 1 August 2020.*" Photographs were also appended. The application was also supported by a Foxleys' job report.

The Respondents' Case

10. No replies were received from the respondents.

The Law

11. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

12. The Tribunal accepts the evidence provided by Mr Morton and the Foxleys' job report as demonstrating that the work was required urgently to maintain public safety. The Tribunal is satisfied that prima facie this category of expenditure falls within the service charge provisions of the leases.
13. The Tribunal notes that there was no opposition against the application from any of the respondents.
14. The Tribunal therefore determined that the appropriate outcome was to grant dispensation unconditionally.

15. This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act.

C Norman FRICS
Valuer Chairman

24 November 2020

Schedule of Respondents

Mr F Clutterbuck
Kanicks Properties Limited
Mr E Del Rio
Mr Isak & Piraye Antika
Bettina Greiling
Sergeant Pepper Limited
Antonios Sitsanis and Chiatsin Jaimie Puah Sitsanis

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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. Where possible any such application should be made by email to London.Rap@Justice.gov.uk.
- 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.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(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, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.