



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

Case Reference : LON/00AM/LDC/2020/0123

Property : 14-16 Sedgwick Street, Homerton,
London, E9 6AE

Applicant : Optivo

Representative : Optivo Legal Services Team (litigation)

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 : 11 December 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 quotation set out in Paragraph 2 below is **GRANTED**.
2. The quotation is as follows:

27 July 2020 132751394	Allied Protection	£33,835+ VAT
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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 189 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 25 August 2020 and amended on 13 October 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 amended Directions required the applicant to send each of the leaseholders a copy of the application form and the directions by 19 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. Notwithstanding Direction 1 of the amended directions, the Tribunal determining the case directed that the names of the respondents be appended to the Decision. This is to ensure open justice as enunciated in *JIH v News Group Newspapers* [2011] EWCA Civ 42 (CA). The Tribunal directed the applicant to provide this information to the Tribunal, which the applicant has done.
7. The Tribunal did not consider that an inspection of the property was necessary.

The Property

8. The property is described as a purpose-built block with 33 residential shared ownership flats, surrounded by similar blocks. It dates from 2008 and consists of a 12 storey purpose-built block of commercial space and residential apartments. The commercial space is on the ground and mezzanine floors. The maximum height of the building is approximately 33m.

The Respondents' leases

9. A redacted sample lease of Flat 1 was supplied, dated 2009, by which a term of 125 years was granted by the applicant. Clauses 3.1 and 3.2 impose obligations on the lessee inter alia to pay the service charge. By clause 7.5 the relevant expenditure is all expenditure reasonably incurred by the landlord in connection with the cleaning clearing repair improvement or management maintenance or provision of services for the building and the common parts of the estate and the service installations including costs incidental to the performance of the landlord's covenants in clauses 5.2 and 5.3. Clause 5.3 obliges the landlord to maintain repair redecorate renew and if reasonably required improve the roof foundations main structure, service installations serving the building and common parts of the building.

The Applicants' case

10. In summary, the applicants' case is that the subject property suffers from defective cladding that poses a fire safety hazard. This was only recently discovered. As an emergency measure, a waking watch service was introduced which involves a relatively high and recurring cost. The proposed temporary alarm system will provide an interim solution at much lower cost. The applicant's advisors stated that the permanent remedial works will take a minimum of 12 months or 16 months if planning permission is required (including lead-in). The applicant received reports from Façade Remedial Consultants ("FRC") dated 11 June 2020 and from Savills on 1 July and 27 July 2020 which concluded that fire safety at 14 Sedgwick St was inadequate and interim measures required. Those reports were appended to the application. In summary, after sampling, FRC found significant quantities of combustible insulation materials in the external wall rendering and in timber cladding. They found that the construction would have been considered inadequate under the advisory provisions of Part B of the building regulations in force at the time of construction.
11. The installation of a temporary alarm as an interim measure is preferable to waking watches because it is automatic and can reduce the need for high numbers of waking watch officers. This is consistent with guidance of the National Fire Chiefs Council, dated 1 May 2018 at paragraph 4.3 which

recommends a common fire alarm system. A waking watch has been in place at the subject property since 27 July 2020 at a cost of £36,795 per month.

12. The qualifying works are the installation of temporary common automatic fire detection and alarm system, to sense fire within all individual flats or communal areas and to alert all residents. This requires access to each dwelling. The cost is a one-off charge of £33,835. The effect of this will be to reduce costs significantly.
13. The applicants submitted that there is no relevant financial prejudice to the respondents and if formal consultation is undertaken there will be a delay in installation, causing additional costs. The applicant obtained two quotations for the temporary alarm system from Fire Services Ltd and Allied Protection Ltd. These were appended in the bundle.

The Respondents' Case

14. No replies were received from the respondents.

The Law

15. 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

16. The Tribunal accepts the evidence and submissions of the applicant as demonstrating that the work is required urgently and will have the effect of significantly reducing costs otherwise incurred. The tribunal noted that the quotations excluded VAT.
17. The Tribunal notes that there was no opposition against the application from any of the respondents.
18. The Tribunal therefore determines that the appropriate outcome is to grant dispensation unconditionally.
19. 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

11 December 2020

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.

Schedule of Lessees (Respondents)

1. Mr Jeremy Edward Acott
2. Ms Rachel Baker
3. Mr Luke Ballard
4. Ms Gemma Bell & Mr Aaron Pownall
5. Mr Jonathan Birch
6. Miss Janice Blandin
7. Mr Alessio Calabrese
8. Mr Phillip Conn
9. Mr Cyril Cornet & Ms Pauline Moisy
10. Mr Frank Cunningham
11. Ms Mary-Ann D Cruz
12. Mr John Devaney & Mrs Lisa Devaney
13. Miss Chloe Dyson
14. Miss Simone Goldate
15. Mr David Heath
16. Miss Claire Hender
17. Miss Lisa Horton
18. Mr Paul Kirven & Miss Louise Phillips
19. Miss Jadwiga Kowalska
20. Mr Alex Philip Marshall
21. Ms Agnieszka Martey & Mr Gabriel Martey
22. Mr Samuel James McGavin & Mrs Faye Peacock
23. Miss Jade McLeod
24. Ms Victoria Metcalfe
25. Ms Kate Neubecker
26. Ms Annabelle Pangborn
27. Mr Miguel Ricciolini

28. Mr Robert Spriggs
29. Mr Bryn Philip Stamp & Mr Michael Dennis Hone
30. Mr Kaykul Umaria Mrs Umaria
31. Ms Semra Van Der Linden
32. Ms Jessica Wigg
33. Mr Samuel Wingate