



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

Case reference : **LON/00BJ/LDC/2021/0114**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **163 Trinity Road, London SW17 7HL**

Applicant : **The Wellcome Trust Limited**

Representative : **Savills (UK) Limited**

Respondents : **The leaseholders of 2 of the 6 flats at 163
Trinity Road, London SW17 7HL (as set
out in a list attached to the application)**

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

**Tribunal
member(s)** : **Judge N Rushton QC**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **2 August 2021**

Date of decision : **2 August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was P: 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 to which the tribunal were referred were in a bundle of 57 pages, plus associated correspondence with the tribunal, the contents of which have been considered by the tribunal.

Decision of the tribunal

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

The application

1. The Applicant, The Wellcome Trust Limited, is the freeholder and landlord in respect of 6 flats at 163 Trinity Road, London SW17 7HL (“**the Property**”), which is a brick building dating from the early 1900s which has been converted into flats. The Applicant acts through its managing agents Savills (UK) Limited of 33 Margaret Street, London W1G 0JD (“**Savills**”). The application is supported by a statement dated 20 July 2021 from David Morton of Savills.
2. The Respondents are the long leaseholders of Flats 3 and 4, who were identified in a list submitted to the tribunal by the Applicant, which included their contact details and which the tribunal has seen. The tribunal understands (although it has not seen evidence of this) that the other 4 flats are not held under long leases and so the tenants of those flats have no interest in this application.
3. The tribunal further understands that Flats 3 and 4 are held under long leases in essentially identical terms, although it has not seen specific confirmation of this. A copy of the lease for Flat 4 was included in the bundle and it includes provision for the payment by the leaseholder of service charges for among other things repair and maintenance works carried out by the landlord.
4. 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).
5. The Qualifying Works comprised the removal of the old bin store at the front of the Property, and its replacement with a new, larger unit which was reinforced with metal and wire to prevent rodents accessing it. The works are said to have been necessary and urgent because there was a rodent infestation causing a health and safety hazard, and the Council was refusing to empty the bins while the bin store remained in disrepair and overflowing. In his statement Mr Morton says that the works have now been carried out at a cost of £3,048. He does not say when this was done, although it was before the application was issued in April 2021.

6. The only issue is whether it is reasonable to dispense with the statutory consultation requirements.

Paper determination

7. The Application is dated 16 April 2021. Directions were issued by Judge Hamilton-Farey on 4 June 2021.
8. Those directions among other things required the Applicant by 14 June 2021 to send each of the leaseholders (and any residential sublessees) by email, hand delivery or first class post: copies of the application form (excluding the list of respondents), the directions and a statement explaining the reasons for the application. The directions also required the Applicant to display a copy of the same documents in a prominent place in the common parts of the Property, and to confirm to the tribunal by 18 June 2021 that these steps had been taken.
9. By an email dated 16 July 2021 to the tribunal, Mr Morton confirmed that the leaseholders of the two flats had been served with the directions. Although it is unclear whether the application form or statement were also served on the leaseholders, it is noted that the directions set out in detail the works, the reason for the urgency, the estimated cost and the fact two quotes were obtained, so the leaseholders will have been made aware of these matters.
10. In his statement Mr Morton states that Savills were alerted to a potential rat infestation at the Property shortly after Savills took over its management on 28 September 2020. He says a rodent problem was reported by the tenant of Flat 1, and a resident of Flat 4 also reported that rodents had caused damage to their car, which was parked in the driveway.
11. Savills commissioned a pest control report from Cleankill Group. Jeff Salmon of Cleankill reported on 8 December 2020 that the bin area outside the house was too small and was overflowing with rubbish, which was attracting rodent activity. He said there was a rat burrow by the front door and various proofing issues which needed to be completed. There were also dead mice in one of the flats. A copy of that report was annexed to Mr Morton's statement.
12. Mr Morton states that the proofing recommendations were carried out and Savills also obtained quotes from two contractors for replacement of the bin store with a larger unit reinforced with metal and chicken wire to prevent rats from burrowing into it. Copies of the quotes were annexed to his statement: the first was from Foxleys dated 3 February 2021 for £2,540 plus VAT (a total of £3,048). The second was from N-Compass dated 15 January 2021, for £3,750 plus VAT (a total of £4,500).

13. Mr Morton further confirms in his statement that the works were awarded to Foxleys, as the lower quote, and that they have been carried out. He says Savills have been invoiced £3,048 by Foxleys, in line with their quote. Foxleys quote described the works as: *“Remove existing bin store. Clean and clear work space. Using treated timber make sub frame form new bin store. Over clad bin store with solid decking board which will supply stability. Overlay roof with 2no layers of felt. Install new ironmongery. Decorate with 2no coats of timber stain.”*
14. No responses and no objections have been submitted by the Respondents, who have taken no active part in this application.
15. 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 9 July 2021. No such request has been received. This application has therefore been determined by the Tribunal on the papers supplied by the Applicant.
16. 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

17. 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.'

18. 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 sections 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

19. The Application gives the following reasons for seeking dispensation: the works were urgent as the condition of the bin store was a health and

safety hazard and the Council would not collect rubbish from the bins given their condition.

20. The details of the works carried out and the costs invoiced are as set out above. The Tribunal finds that the works have been carried out, as described in the Foxley quote and confirmed by the statement from Mr Morton.
21. The copy of the directions which was sent to the leaseholders set out details of the proposed works, their cost and the reasons for urgency, and included a form for filing any objections. There is no evidence that any observations were received from any of the leaseholders.
22. The Tribunal is satisfied on the basis of the statements in the Application, Mr Morton's statement in support and the documents in the bundle, and in the absence of any other representations from the leaseholders, that the Qualifying Works were necessary and urgent in nature, having regard to the health and safety risk to the occupants of the Property from the established rodent infestation, which centred on the defective bin store.
23. 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

24. 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.
25. 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.

Name: Judge N Rushton QC

Date: 2 August 2021

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).