



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

Case Reference : **LON/00BJ/LDC/2023/0022**

Property : **Flat 3, 6 Battersea Square SW11 3RA**

Applicant : **Harkalm Properties Limited**

Representatives : **Mr Ben Sarner (Director of the Applicant); Quinta Law LLP, Solicitors London EC1**

Respondents : **As per the attached schedule**

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 : **27 September 2023**

DECISION

Decision

1. The application for dispensation from the consultation requirements in respect of asbestos removal works to Flat 3, 6 Battersea Square SW11 3RA more particularly described in the All Asbestos Ltd quotation of 18 May 2023 is **GRANTED** unconditionally.

Reasons

Background

2. Application to the Tribunal was made on 2 June 2023 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix). The subject matter was the licenced removal of asbestos-containing materials to Flat 3, 6 Battersea Square SW11 3RA, described as urgent. The estimated cost was £23,720 plus VAT as per a quote from All Asbestos Ltd dated 18 May 2023.
3. Directions were issued on 7 July 2023 that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The directions required publicity to be given to the application in the block. In addition, the respondents were invited to respond to the application.

The Property

4. The property was described as “ground floor commercial premises (currently vacant) and 8 flats set out over 4 floors (including the ground), sold off on a long leasehold basis.” The Tribunal did not inspect the property.

The Leases

5. Leases were supplied, but the Tribunal makes no finding as to payability or reasonableness of the costs to be incurred as that is outside the scope of this application. The Tribunal has jurisdiction to make such determinations under sections 19 and 27A of the Act upon separate application.

The Applicant’s Case and Nature of the Works

6. Following an asbestos management survey of 12 April 2023 by All Asbestos Limited, in respect of Flat 3, significant asbestos was identified. Removal was recommended and sealing of Flat 3 to ensure public safety. The asbestos management survey included a detailed analysis and extensive photographs. The scope of works was “Removal and disposal of asbestos insulating board (AIB) linings as per survey to fire place and underside of floorboards under fully controlled conditions inclusive of air monitoring (please note that this quotation is not inclusive of re-boarding to the flooring).” All Asbestos subsequently advised that no-one should enter the flat without the necessary PPE and face mask. The property was said to be contaminated with brown

asbestos and unsafe to occupy. The Applicant was concerned about public safety and the work was therefore urgent.

7. From copy correspondence, the leaseholders were notified of the application as required by the Directions. Publicity within the common parts was also given as required by the Directions.

The Respondents' Cases

8. The lessees did not respond to the application.

The Law

9. 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

10. The Tribunal finds that the asbestos removal was urgent as it represented a threat to health and safety. No lessee has objected to the application. The Tribunal has not identified any prejudice caused to any lessee as a result of the application. Accordingly, the Tribunal grants dispensation unconditionally.
11. This applies only to residential parts of the building. Commercial parts of the property are outside the scope of section 20 of the Act and the Tribunal has no jurisdiction under section 20ZA in relation to commercial premises.
- 12. This application does not concern the issue of whether any service charge costs have been reasonably incurred or are payable. The residential leaseholders continue to enjoy the protection of sections 19 and 27A of the Act.**

Charles Norman FRICS
Valuer Chairman

27 September 2023

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.
- 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

Flat Number	Leaseholder
1	L S Dixon Group Limited
2	Mr Thomas Edward Scriven-Baker & Mr Matthew Alexander Scriven-Baker
3	Mr Martin John Luke
5	Mr Nicholas Charles Matthew
6	Mr Bruce Anthony St. Julian-Bown and Mrs Eileen Patricia St. Julian-Bown
7	Mr James Michael Bretherton Dewar
8	Ms Annabel Madeleine Jane Manuel
9	Alexander John Knowles