11918

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LDC/2016/0046**
Property	:	**42 Lennox Gardens, London SW1X 0DF**
Applicant	:	**The Wellcome Trust Ltd (as trustees of the Wellcome Trust)**
Representative	:	**Knight Frank LLP through Mr Coddington and Mr Rajabally**
Respondent	:	**The leaseholders as set out on the schedule attached to the Application**
Representative	:	**Not known**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal members	:	**Tribunal Judge Dutton** **Mr C P Gowman MCIEH MCMI BSc**
Date of decision	:	**15th June 2016**
	:	

DECISION

© CROWN COPYRIGHT 2016

DECISION

We determine that dispensation should be given from all or part of the consultation requirements in respect of the replacement of the 1st Floor flat roof covering, insulation and associated works as required under s20 of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. The application states that a leak has been discovered from the flat roof at first floor level allowing water to enter the ground and thereafter the basement flat at the property 42 Lennox Gardens SW1X 0DF (the Property). What turned out to be temporary repairs were undertaken but a survey has confirmed that they will not suffice and that a complete replacement of the flat roof with associated works is required. The works have yet to be commenced.

3. Directions were issued dated 12th May 2016 including a questionnaire to be returned by each leaseholder indicating whether they supported the application or objected to same. At the time of our determination there do not appear to have been any objections. At the hearing today Mr Coddington confirmed that no objections had been notified to Knight Frank (KF)

4. Submissions were lodged on behalf of the Applicant by its managing agents KF and included in the hearing bundle at page 21. We noted all that was said. The matter came before us for hearing on 15th June 2016

Hearing

5. It appears from the statement produced by KF that the leak came to light in January 2016. This followed cyclical external decorative work in 2015. We were told by Mr Coddington that an inspection of the flat roof had not been undertaken prior to the decoration works. This was hampered by the fact that decking had been installed by a tenant of the first floor flat, apparently without the Landlords consent. It is not know when these works were undertaken. We were told that the 'Terrace Rules' prohibited the installation of decking without such consent. However, the survey did not indicate that the decking had caused or contributed to the leak. It appears, so we were told, that the roof covering beneath the decking was in poor condition.

6. The statement of grounds for dispensation gives a time line from the discovery of the leak to the issuing of the application. Prior to the issuing of

---

[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

the application tenders were issued and a cost of £25,002 is the estimate for the works, set out in a detailed specification included within the hearing bundle. This appears to include the covering of the flat roof with grey promenade tiles.

7. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the re-roofing works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

8. We have considered the papers lodged by KF on behalf of the Applicant, the directions issued by this Tribunal and the representations made to us at the hearing. It seems clear from the papers that these works are required to be undertaken as soon as possible and the Applicant has proceeded with the lowest quote received.

9. There is no evidence given to us of any prejudice having been suffered by any tenant if dispensation were to be granted. We had received an email from Mr Petrie the owner of the Fourth floor flat. He said that *"for the sake of my fellow tenants on the ground floor and basement I do not intend to oppose the Landlord's request for dispensation...Clearly the remedial work needs to be undertaken"*. The email went on to raise issues as to why this had not been picked up at the time of the external decoration works in 2015, which if it had might have resulted in costs being *"significantly lower than is now the case"*. The message finishes with *"In the circumstances, and in the interest of good Landlord/Tenant relations, I would ask the Tribunal to seek a contribution to the costs of these works from the Landlord"*. No other objections or comments have been received, either at the Tribunal, or with KF.

10. We should say for Mr Petrie's and indeed the other leaseholders benefit that our decision relates to dispensation only. As we have indicated above there is no evidence before us of prejudice being occasioned to the leaseholders in granting dispensation. The points raised by Mr Petrie can be pursued, if thought appropriate, under the provisions of ss 19 and 27A Landlord and Tenant Act 1985 (the Act)

11. In the circumstances, given the clear need for the works to be undertaken it is, we find, appropriate to dispense with the consultation requirements in this case. As we have indicated above our decision does not affect the right of the Respondents to challenge the cost of or the standard, reasonableness or payability of the works should they so wish under the provisions of Act.

Andrew Dutton

Tribunal Judge

Andrew Dutton 15th June 2016

The relevant law

Section 20 of the Act

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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).