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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND
TENANT ACT 1985 (as amended)**

Case Reference: LON/00AW/LDC/2013/0006

Premises: Lincoln House Basil Street London SW3 1AN

Applicant: Lincoln House (Basil Street) Limited

Representative: Douglas & Gordon Limited

Respondents/leaseholders: Various leaseholders named in the Application

Leasehold Valuation Tribunal: Mrs N Dhanani LLB(Hons)
Mr M Taylor FRICS

Date of decision: 25th February 2013

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the removal of asbestos from the basement, main corridor, communal boiler and leaseholder storage areas of the Premises.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of the removal of asbestos from the basement, main corridor, communal boiler and leaseholder storage areas of the Premises.
2. The relevant legal provisions are set out in the Appendix to this decision.

Background:

3. The Premises is purpose built mansion block circa 1915 comprising 48 flats.
4. The Applicant is the landlord. The Applicant's representative claims the presence of asbestos prevents access to the communal boiler and a number of storage spaces which had contaminated interiors. The Landlord wished to proceed with the works as quickly as possible and so these works were undertaken by a licensed contractor and the works completed on the 21 December 2012.

Directions:

5. The Application was received by the Tribunal on the 7 January 2013 and issued Directions in the matter on the 10 January 2013 setting the matter down for a determination on the papers in the week commencing the 25 February 2013.

Inspection:

6. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party

The Applicant's Case:

7. The Applicant's representative claims a survey was carried out at Lincoln House in 2007 and asbestos was subsequently either removed or managed as per the requirements detailed in the survey. However the

survey omitted the storage room areas and an element of the basement corridor. It is claimed that the Applicant's Representative is currently undertaking investigations into the distribution pipework in the Premises with a view to replacement in the coming years, and whilst the consultant was undertaking the initial survey and report, the presence of asbestos in the pipework was noted.

8. The Applicant's Representative arranged for a specialist asbestos company Mayrose to test and sample the areas. The presence of asbestos was confirmed. The Landlord was of the opinion that the removal work was required firstly to ensure access was maintained to the corridor and adjacent communal boiler plant rooms, and secondly so that a water leak on an incoming water mains pipe could be rectified. The Landlord considered that these works could not be deferred until after the statutory consultation procedure and so the works were commenced and completed on the 21 December 2012.
9. The Applicant's representative has produced a copy of a letter dated 5 December 2012 which it claims was sent to all the leaseholders. The letter informs the leaseholders that urgent asbestos removal works are necessary and they expect the total cost of the works to be in the region of £30,000.
10. The Applicant's representative has also produced a copy of the letter of the 17 January 2013 sent to the leaseholders informing them that the works were undertaken at a cost of £23,098 plus VAT and the costs were met by the reserve fund. In addition this letter informs the leaseholders that they have applied for dispensation from the Statutory Consultation procedures and encloses a copy of the application to the Tribunal as well as a copy of the Directions.
11. The Applicant has produced a copy of a sample lease.
12. The Tribunal has received no submissions or objections from any of the Respondents.

The Law:

13. s. 20 of the 1985 Act provides that:

"(1) Where this section applies to any qualifying works....., 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."*

14. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.
15. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

16. **s. 20ZA** of the 1985 Act provides:

"(1) Where an application is made to a leasehold valuation 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."

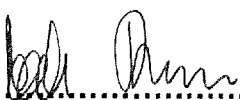
17. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

18. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
19. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The landlord has not complied with the consultation requirements set out in the 2003 Regulations. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both landlord and leaseholders and the health safety or welfare of the occupiers of the Premises. The leaseholders have not made any representations.

20. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works are urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information.

21. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the proposed asbestos removal. In doing so, it is important to note that the Tribunal does not make any findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN.....

DATE..... 25 February 2013