



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/26UL/LDC/2015/0015

Property : 1-9 Batterdale,
Old Hatfield,
Herts. AL9 5JE

Applicant : Batterdale Management Co. Ltd.

Respondent : James Alexander Drury (1)
Mr. & Mrs. J. Austin and Mr. & Mrs. R. Milani (2)
Kathleen Fellas (3)
Ms. M. Tomlin (4)
Mr. A. Ellis (5)
Mr. N A & Ms. C A Sherlock (6)
Jennifer Anne Eke (7)
Mr. Haddy (8)
Christopher & Christine Granger (9)

Date of Application : 13th October 2015

Type of Application : for permission to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA Landlord
and Tenant Act 1985 (“the 1985 Act”))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to remove asbestos from bays 1 and 7; encapsulate and over-board asbestos affected panels in bays 4 and 6; form an asbestos respirator zone adjacent to the fire door and encapsulate asbestos insulation board risers and ceiling panels in the underground car park to the property.

Reasons

Introduction

2. This is an application for dispensation from the consultation requirements in respect of ‘qualifying works’ to the underground car park of the property.

The members of the Tribunal were unable to see copies of the leases relating to the property but it is assumed, for the purpose of this decision, that the Applicant is responsible for keeping the structure of the building in which the flats are situated in good repair and condition.

3. A procedural chair issued a directions order on the 19th October 2015 timetabling this case to its conclusion. The first direction said that the Applicant had to set down in a statement, the history of the problem, when it was identified and whether any claim had been made against the builder, as the property seemed to be quite modern. It was to attach copies of any reports obtained plus any estimates.
4. Some of this direction has been complied with, but not all. The first 'report' produced is from 4Site Consulting following a site visit on the 27th February 2015. However, this is only a re-inspection report which has very little detail but it is clear that the problem with asbestos has been known about for some time. The report recommends some encapsulating work. There is reference to an original report dated 18th September 2012 and further advice having been given on the 24th October 2013.
5. There is then a quotation from 02 Environmental Surveys dated 29th June 2015 quoting £3,800 plus VAT to remove the asbestos ducting plus 2 options of 'Air Testing' in the sums of £450 or £900 plus VAT respectively. Alternatively they quote £1,400 plus VAT for encapsulation of the offending panels.
6. Toolbase Environmental Ltd. provided a quotation for the removal and disposal of the asbestos insulation boarding at a cost of £2,400 plus VAT plus reinstatement of glassroc panels at a cost of £985 plus VAT. Finally, Lenval Ltd. provided a report and quotation dated 25th September 2015 for the removal of the offending panels and reinstatement at a cost of £1,130 for each of bays 1 and 7 and then a further £725 to encapsulate the panels in bays 4 and 6 plus £355 quoted to form an asbestos respirator zone adjacent to the fire exit door and encapsulate insulation board risers and ceiling panels.
7. Oddly, the Applicant's representations state that at the time of the visit by Lenval, "*It was apparent on the visit that the areas had been damaged further and the matter was **not** urgent*" (emphasis added). The Tribunal can only assume that this is a mistake and was intended to mean that the work was **now** urgent.
8. The managing agents then wrote to the Respondents on the 13th October 2015 with the first section 20 letter enclosing a quotation. It does not say which quotation but, again, the Tribunal can only assume that it is the Lenval quotation. The representations say that the work was scheduled for the 26th-28th October 2015.
9. There is not mention of any approach having been made to the original builder.

10. The directions order also said that if any Respondent wished to make representations, then these should be filed and served by the 30th October 2015. None were received by the Tribunal.
11. Finally, the order said that the Tribunal was content to deal with this matter on a consideration of written evidence and the written representations of the parties on or after the 5th November 2015. However, it offered an oral hearing should any party request one. No such request was received.

The Law

12. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals.
13. The landlord's proposals, which should include the observations of tenants and the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
14. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable so to do.

The Inspection

15. The Tribunal did not consider that it was necessary to inspect the car park in question as it was clear that there is a problem with asbestos and that it needs attention. None of the Respondents has suggested that this is not the case. Having said that, all parties were informed that if they wanted an inspection, then a request would be considered by the Tribunal. None was received.

Conclusions

16. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the matters to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances?
17. It is clear that there has been a problem with asbestos since at least 2012. The Applicant seems to have been considering its options and various quotations have been received. A decision seems to have been taken to

remove as much of the damaged asbestos as possible and 'encapsulate' or seal the remainder.

18. The dangers of asbestos and its link to respiratory illnesses such as asbestosis have been in the public domain for years. Unfortunately there is no independent report setting out exactly what the extent of the damage is or the 'pros' and 'cons' of the various suggested remedies. Nevertheless, in view of the health and safety issues, the Tribunal gives dispensation from the remainder of the consultation requirements.
19. However, it should be made clear that this decision is not a determination as to the payability of the service charges or the reasonableness of the cost or the works being arranged.



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Bruce Edgington
Regional Judge
12th November 2015

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.