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

Case reference : **LON/00BK/LDC/2016/0029**

Property : **Queens Court South, Queensway
London W2**

Applicant : **William Pears Ltd**

Representative : **Hamways Ltd**

Respondent : **Various leaseholders of flats at
Queens Court South, Queensway
London W2 as per application**

Representative : **None**

Type of application : **Section 20ZA Landlord and Tenant
Act 1985- To dispense with the
requirement to consult
leaseholders about the works.
Judge: N Haria**

Tribunal member(s) : **Professional member : M Taylor
FRICS**

Date of decision : **18 April 2016**

DECISION

Decision of the Tribunal:

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of works to repair a leak in the communal heating and hot water pipe undertaken by:

- 1. Asbestoserve Limited including the carrying out of emergency asbestos removal as detailed in their invoice dated 20/11/2015 Invoice Number: 2445 in the sum of £6300.00, and**
- 2. John Scofield as detailed in the invoice dated 29/12/2015 Invoice Number: 11170 in the sum of £6810.00.**

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 works to the property required to replace the electrical substation in order to increase supply capacity.**

Hearing

- 2. The parties did not request a hearing and so the matter was dealt with on the papers.**

Background:

- 3. The property comprises of 45 flats located above commercial premises on the ground floor with common hallways and stairs.**
- 4. The Applicant is the freeholder and landlord and is represented by the managing agent.**
- 5. The managing agent claims that a communal heating and hot water- pipe located in the first floor utility cupboard of the residential upper parts of the property split and caused a leak to the commercial premises below. The Applicant formed the view that if the pipe was not repaired it was likely that it would cause significant damage to the commercial premises and communal areas of the residential upper parts and the flats within the property could have been without heating and hot water for a prolonged period. The only source of heating and hot water for the building is from the communal system. The Applicant instructed a contractor to undertake**

works to remove the asbestos coating around the pipe and to undertake works to repair the leaking pipe.

6. The total costs incurred for the works are £12,060.00.

Directions:

7. The tribunal issued directions on the 10 March 2016 providing for the lessees to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the lessees.

Inspection:

8. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case:

9. The Applicant's case is fully set out in the application and supporting documents.
10. The Applicant has produced a copy of a sample lease relating to flats in the property, the Applicant did not confirm that the leases of all the flats in the property had been granted in an identical form.
11. The Applicant states that the leaseholders are responsible for paying a proportion of the total expenditure depending on the percentage stated within their lease as per clause 4(a) in the sample lease. The leaseholders covenants to pay the service charge as per provisions of the Third Schedule to the sample lease and clause 2 of Third Schedule requires that the leaseholder contributes to the cost of ...*"periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the boilers and other plant and machinery used for the supply of hot water to the heating and domestic hot water systems serving the South Block and the conduits and other pipes valves and radiators in the common parts of the South Block"*
12. The Applicant has not received any responses from the leaseholders.

The Respondent's Case:

10. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

11. **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.”*

12. 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) the tribunal.

13. "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.

14. **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.”

15. Under Section 20ZA(1) of the 1985 Act, "where an application is made to atribunal 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 consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's decision:

16. The Supreme Court's decision in the case of Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
17. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
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 prejudice has been suffered by any 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 burden is on the landlord in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.
20. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
21. The tribunal is satisfied that the works were of an urgent nature given that if the works were not undertaken there was a potential of damage to the commercial premises and a disruption to the heating and hot- water supply to the property.
22. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
23. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the managing agent had not obtained an independent report from an expert, the leaseholders have not had the chance to nominate a contractor of their choice and the works had not been put out to tender so the tribunal cannot be sure that the cost of the works are reasonable.
24. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent and the applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders

with relevant information. In view of the urgent nature of the works and the circumstances under which the works became necessary the tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, have suffered any significant relevant prejudice.

25. 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 works to repair a leak in the communal heating and hot water pipe undertaken by:
- (i) Asbestoserve Limited including the carrying out of emergency asbestos removal as detailed in their invoice dated 20/11/2015 Invoice Number: 2445 in the sum of £6300.00, and
 - (ii) John Scofield as detailed in the invoice dated 29/12/2015 Invoice Number: 11170 in the sum of £6810.00.
26. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: N Haria

Date: 18 April 2015