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

Case Reference : LON/00AN/LDC/2013/0095

Property : 139 Hurlingham Road, London
SW6 3NH

Applicant : Concerto Properties Ltd

Representative : Sophie Minot, HML Hathaways

Respondent : The tenants

Representative : No appearance, but written
representations from Brigitte
Lardier (Flat 2)

Type of Application : Dispensation from consultation
requirements

Tribunal Members : Judge Adrian Jack, Tribunal
Member Duncan Jagger MRICS

Venue of Deliberations : 10 Alfred Place, London WC1E 7LR

Date of Decision : 29th October 2013

DECISION

Decisions of the tribunal

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the removal of asbestos and consequential works.
2. The Tribunal gave directions on 25th September 2013, which provided for the case to proceed by way of a paper determination, unless any of the parties requested an oral hearing. In the event no one has requested an oral hearing and the Tribunal has proceeded to determine the matter on paper.
3. No inspection was requested and none was held.

Determination

4. In the current case there is an urgent need to carry out the works. A tenant has cut into the asbestos-lined communal electricity cupboard. This has caused the release of asbestos. The cupboard has been isolated, but there is still a danger to human health.
5. The landlord has consulted as best it can with the tenants. Of the four tenants, three are agreeable to the Tribunal granting a dispensation. Only one tenant, Ms Lardier of Flat 2, opposes the application. She raises a number of issues. She puts in issue whether Concerto Properties Ltd is the landlord. It appears to be common ground, however, that Concerto is the registered proprietor at HM Land Registry. In those circumstances, the Land Register is in our judgment conclusive.
6. She suggests that there should be a section 20 consultation, but limited to one month. Unfortunately this is to misunderstand the nature of a section 20 consultation. Such a consultation is a two stage process and cannot be reduced to a one month period. It typically takes three months. It is for this reason that the landlord is seeking dispensation.
7. She points out that there may be an asbestos issue in the rubbish shed. There is, however, no indication that that problem (unlike that in respect of the electricity cupboard) is urgent.

8. We remind ourselves that the sole issue for our determination is whether the landlord should be required to carry a full section 20 consultation in respect of the works to the communal electrical cupboard. In our judgment the urgency of problem is such that dispensation should be granted.

9. This does not leave Ms Lardier (or the other tenants) without a remedy. If the works should have been paid the tenant who caused the damage or if the cost of the works is excessive or if the quality of the workmanship poor, then it is open to the landlord or the tenants to apply to the Tribunal for a determination of those issues. That, however, would be the subject matter of a separate application.

Name: Judge Adrian Jack

Date: 29th October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (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) the appropriate 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.]

Section 20ZA

- (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.
- (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.