

10859



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

**Case Reference** : **LON/00AW/LDC/2015/0034**

**Property** : **38 Lennox Gardens, London SW1X  
0DE**

**Applicant** : **The Wellcombe Trust Limited**

**Representative** : **Knight Frank LLP**

**Respondent** : **Various leaseholders as per the  
application**

**Representative** : **None**

**Type of Application** : **To dispense with consultation  
requirements of section 20 of  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Judge Pittaway  
Mr L Jarero BSc FRICS**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **21 April 2015**

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**DECISION**

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## Decision of the tribunal

The tribunal is satisfied that it is reasonable to grant the application and dispense with the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 (“the Act”) in relation to works to the communal fire alarm in the sum of £5,196.22 (plus VAT) and the communal emergency lighting system in the sum of £3,487.60 (plus VAT).

## The application

1. The applicant landlord seeks dispensation from some or all of the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 (“the Act”) in relation to certain qualifying works at a total cost of £8,683.82 (exclusive of VAT), £10,420.58 (inclusive of VAT)
2. The application relates to works that were completed in or around October 2014 to the communal fire alarm installation and the communal emergency lighting system (the “**Works**”).
3. An application was received by the tribunal 10 March 2015 to dispense with the consultation requirements provided for by section 20 Landlord and Tenant Act 1985 which described the Works as works required to the communal fire alarm installation and the communal emergency lighting installation highlighted by “a recent fire risk assessment”.
4. The reason for seeking dispensation was set out in the application as follows;

*“The Building did not have any emergency lighting and battery powered smoke detectors in the common parts were the only form of fire detection. A recent fire assessment highlighted the urgent need for a fire alarm and emergency lighting system in the common parts.*

The application further stated that the applicant had decided to forward fund the Works in order to comply with the provisions of The Regulatory Reform (Fire Safety) Order 2005 and “*reduce the risk to the leaseholders as quickly as possible*”.

5. The application further stated that the leaseholders were informed of the intended works on 21 October 2014, and of the applicant’s intention to forward fund the works, and to seek retrospective dispensation for the need for consultation and the leaseholders were provided with copies of the fire risk assessment.
6. Directions were issued by the tribunal on 18 March 2015 and copied to all the leaseholders. The directions invited any respondent to advise the tribunal (and the applicant) if they wished to oppose the application by 30 March and that if they agreed the application there was no need to

reply to the tribunal and their agreement to the application would be inferred from their non-response. The tribunal has received no response from any leaseholder.

7. The parties having received 28 days notice of the tribunal's intention to determine the matter without a hearing, and no party having requested an oral hearing the bundle of documents received from Knight Frank LLP.
8. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

9. From the fire risk assessment report (which the tribunal note is dated 25 July 2014) the tribunal understand that the applicant is the freeholder of a six storey terraced house at 38 Lennox Gardens SW1 and the respondents are the long lessees of the flats in the Property, under leases of the Property which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge.

### **The Qualifying Works**

10. The Works in respect of which the applicant seeks to dispense with all or any of the consultation arrangements are described briefly above at paragraph 3 and more particularly in the application.

### **Inspection**

11. No party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

### **Reasons for the tribunal's decision**

12. Having considered all of the documents provided, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements because of the stated risk to the leaseholders, notwithstanding that it appears that the applicant's representative took no action between July and October 2014.
13. There is no evidence before the tribunal that the leaseholders would be prejudiced by dispensation with the consultation requirements and the tribunal is satisfied that they will not be so prejudiced.

14. In all the circumstances the tribunal therefore considers it is reasonable to grant the application and to dispense with the consultation required under the Act in respect of the Works.
15. It should be noted by the parties that this determination does not affect the right of the leaseholders under section 27A of the Act to challenge the payability (other than by reason of non-compliance with the consultation requirements as permitted by this decision) or reasonableness of the cost of the Works to be recovered under the service charge provisions of their leases

**Application under s.20C and refund of fees**

16. No application has been made for a refund of the fees that the Applicant paid in respect of the application<sup>1</sup>.
17. No application was made for an order under section 20C of the 1985 Act.

**Name:** Judge Pittaway

**Date:** 21 April 2015

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 20C**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;

- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **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.

### **Service Charge (Consultation etc) (England Regulations) 2003**

[**Schedule 1 to the Regulations** contains the consultation requirements for qualifying long term agreements other than those for which public notice is required.]

[And/or]

[**Schedule 2 to the Regulations** contains the consultation requirements for qualifying long term agreements for which public notice is required.]

[And/or]

[**Schedule 3 to the Regulations** contains the consultation requirements for qualifying works under qualifying long term agreements and agreements to which regulation 7(3) applies.]

[And/or]

[**Part 1 of Schedule 4 to the Regulations** contains the consultation requirements for qualifying works for which public notice is required.]

[And/or]

[**Part 2 of Schedule 4 to the Regulations** contains the consultation requirements for qualifying works for which public notice is not required.]