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

Case Reference : LON/00 AE/LDC/2018/0010

Property : Mapesbury Court, 59-61 Shoot Up Hill, London NW2 3PU

Applicant : Transgain Limited

Representative : Michael Jacobs- Michael Laurie
Magar Ltd

Respondents : All residential long leaseholder of
Mapesbury Court

Type of Application : Application under section 20ZA to
dispense with consultation
requirements

Tribunal Members : Ms M W Daley
Mrs A Flynn MRICS MA

**Date and venue of
Paper determination** : 12 February 2018 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 12 February 2018

DECISION

Decision of the tribunal

1. The tribunal grants the Applicant dispensation from the consultation requirements in respect of Major Works to undertake the work of removal and encapsulating the asbestos
2. The Grant of the Dispensation from the Consultation requirements is not a determination of the reasonableness or payability of the service charges of £47,327.00 for the cost of removal and encapsulating. Any issues concerning reasonableness of the cost of this work have not been determined by this Tribunal.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
2. The application is in respect of work to be carried out to the roof of the premises known as Mapesbury Court, London NW 2, ("The Premises").
3. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are recoverable or payable.
4. The application to the tribunal was dated 22 December 2017 and directions were given this matter on 16 January 2018.

The background

5. The premises are a purpose built mansion block comprising 2 buildings containing 40 apartments. The building was constructed in the early 20th Century. The blocks contain communal heating and hot water services are run via central boiler systems in plant rooms to the basement of each block.

6. The directions dated 16 January 2018, provided for the Applicant to prepare a bundle for the tribunal's use and serve a copy of the application to each of the leaseholders and to display a copy of the applications together with these directions in a prominent position in the common parts. The Applicant was also provided with a pro forma response to be provided to the leaseholders/respondents to enable them to provide a response to the Tribunal.
7. The Respondents were directed to make a response to the application stating whether or not they agree to the dispensation being given or not by 30 January 2018.
8. Of the leaseholders, the managing agents received a number of emails asking when the heating and hot water was to be restored and three queries relating to the work.
9. The Applicant also received one notice of opposition from the leaseholder for flat 36- Mr Max Smiliy.
10. The matter was listed for a paper determination in the week beginning 12 February 2018.

The Paper Determination

11. The Applicant provided the Tribunal with a bundle of documents in compliance with the directions.
12. The background to the application was set out in Paragraph 2.0 of the Applicant's Statement of full grounds for dispensation. The premises are being managed by Michael Laurie Magar Limited ("MLM") who took over the management of the premises on 1 December 2017. The managing agent's found that the gas to the premises which supplied the heating and hot water had been disconnected due to a gas leak (Cadent Contractors). However it was not possible to carry out a repair due to the presence of Asbestos in the boiler room and concerns about the health and safety implications for the contractor's employees.

The premises are currently without heating and hot water, and it was not deemed practical to carry out a full consultation exercise under section 20 due to the urgent nature of the work and the inconvenience to the leaseholders.

14. The Applicant had obtained quotations from Asbestos removal companies and had emailed the leaseholders on three occasions on 5, 15 and 20 December to inform them about the issues and the proposed solution and to keep them informed concerning the tender and the proposed work.
15. The Applicant had not served Section 20 Notices for the reasons set out above. Two quotations had been obtained from Oracle Asbestos (£47,327) and GBNS Partnership (£48,404). Both contractors were members of Asbestos Removal Contractors Association and Asbestos Testing and Consultation Association.
16. The Applicant intended to instruct the contractor with the lowest tender Oracle.
17. The Applicant provided the Respondents with copies of the documents referred to above. One of the leaseholders Mr Smilly objected to the work. His emailed objection dated 29 January 2018 stated:- "The Section 20 consultation has not been conducted and as a consequence leaseholders' rights to be protected from paying more would be appropriate...The fact that asbestos removal works had become urgent was totally due to the landlord's failure to comply with asbestos regulation in previous years".
18. He requested that the application be struck out.

The Tribunal's decision

19. The Tribunal has determined to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the work of removal and encapsulating the asbestos. The Tribunal has taken note of Mr Smilly's objections however it considers that in all the circumstances including the inconvenience to the leaseholders and urgent nature of the work that it is appropriate to grant dispensation
20. The Tribunal noted however that the Applicant has decided to use the lowest tender, the Tribunal considers that in all the circumstances there is no prejudice in granting the application to dispense with the consultation requirements.
21. The Tribunal directs that the Applicant shall notify all Respondents of the determination of the Tribunal.
22. There was no application for costs before the Tribunal.

23. The granting of this application is not a determination of the reasonableness and payability of the service charges in respect of the work of encapsulating and removing the asbestos, an application may subsequently be brought, (By Mr Smilly or any leaseholder) to determine the reasonableness and payability of the service charges in relation to this sum.

Judge Daley

Date 12 February 2018

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Annex 2

S20ZA Consultation requirements: supplementary

- (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.[...] [FN1]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151