



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

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| <b>Case Reference</b>                      | : | <b>LON/00AU/LDC/2018/0035</b>   |
| <b>Properties</b>                          | : | <b>Flats 1-17, The Roof Garden, 41-53<br/>Goswell Road, London EC1V 7EH</b>                     |
| <b>Applicant</b>                           | : | <b>Lancashire County Council</b>  |
| <b>Representative</b>                      | : | <b>Knight Frank LLP</b>   |
| <b>Respondents</b>                         | : | <b>The Long Lessees of Flats 1-17, The<br/>Roof Garden</b>                                      |
| <b>Representative</b>                      | : | <b>None</b>   |
| <b>Type of Application</b>                 | : | <b>S20ZA Landlord and Tenant Act<br/>1985 – dispensation with<br/>consultation requirements</b> |
| <b>Tribunal Members</b>                    | : | <b>Judge John Hewitt<br/>Mr Derek Barnden MRICS</b>   |
| <b>Date and venue of<br/>Determination</b> | : | <b>16 May 2018<br/>10 Alfred Place, London WC1E 7LR</b>   |
| <b>Date of Decision</b>                    | : | <b>16 May 2018</b>  |

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**DECISION**

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### **The issue before the tribunal and its decision**

1. The issue before the tribunal is an application pursuant to s20ZA Landlord and Tenant Act 1985 (the Act) in which the landlord seeks dispensation with the need to comply fully with the consultation requirements imposed by s20 of the Act in respect of qualifying works proposed to be carried out as set in an estimate dated 2 May 2018 prepared by VDM Projects Ltd and in an estimate dated 20 April 2018 prepared by Masterfix GB Ltd (the proposed works).
2. The decision of the tribunal is that the dispensation sought shall be granted conditional upon the applicant not seeking to pass through the service charge payable by the respondents any of the costs of and incidental to these proceedings.
3. The background to this application and the reasons for our decision are set out below.

### **Background**

4. The subject development comprises a six-storey building, basement to fourth floor in which there are 17 self-contained apartments. There is an internal lift serving the upper floors and a single internal staircase. Externally there are balconies and walkways and an external staircase. There are two commercial units on the ground floor.
5. The applicant procured a fire risk assessment to be carried out by Fire-XC2559 on 30 July 2017. The risk assessment report is dated 30 August 2017. The report made a number of recommendations as regards fire safety matters, some of which were said to be more urgent than others. The 'High Risk' matters raised included such items as fire doors/intumescent strips and compartmentalisation of service doors and risers.
6. February 2018 the tribunal received the application for dispensation. It is dated 12 January 2018 and was signed by the applicant's previous managing agents, Savills. It stated that the proposed works were urgent and that it was proposed to commence them in January 2018. It also mentioned that some prior notice/information had been given to the lessees.
7. Directions were given on 15 February 2018 and the tribunal indicated it proposed to determine the application on the papers and without an oral hearing during week commencing 28 March 2018 unless any party requested an oral hearing. Directions were given to enable the application to progress.
8. Evidently a further fire risk assessment report was procured. It is dated 7 March 2018
9. The applicant's then representative did not respond to communications from the tribunal. On 27 March 2018 the tribunal gave formal notice of an intention to strike out the application on a number of grounds

including, failure to comply with directions, failure to co-operate with the tribunal and abuse of process. That led to the discovery of a number of failures on the part of Savills. Further directions were dated 9 April 2018 which included a requirement by the applicant to serve copies of the application and the directions on the lessees. By letter dated 16 April 2018 Savills certified to the tribunal compliance with that direction.

10. The tribunal has not received any request for an oral hearing and has not received any objections to the application from lessees.
11. At some point Knight Frank LLP were appointed managing agents in place of Savills. Knight Frank has procured two estimates for the proposed works, as detailed above. We understand copies have been sent to the lessees with the proposal to place the contract with VDM Projects on the basis that its estimate of £13,172.63 + VAT is the more competitive.

### **Reasons**

12. S20ZA enables a tribunal to dispense with all or any of the consultation requirements where it considers it reasonable to do so.
13. In the circumstances of this matter we find that it is reasonable to grant the application. The applicant has kept the lessees reasonably well informed of the issues and has obtained two estimates.
14. We note the advice given to the applicant in August 2017 that the proposed works should be carried out as a matter of some urgency. That sentiment is advanced by both Savills and Knight Frank. What is not clear to us is why given that advice the proposed works have not yet been carried out. Neither Savills nor Frank Knight have put forward any explanation. We have not been told whether or not the contract has yet been placed.
15. If the applicant had acted promptly upon the advice which it sought and obtained in August 2017 it could have carried out a full consultation process which would have been completed prior to the making of the application to the tribunal. In these circumstances we find that the costs of this application could and should have been avoided. Thus any costs which the applicant may have incurred in connection with these proceedings have not have been reasonably incurred.
16. Accordingly, we find it just and equitable to grant the dispensation sought conditional upon the applicant not passing any costs of or incidental to these proceedings through the service charge payable by any of the respondents.
17. In arriving at this decision we make it clear that we make no findings as to the reasonableness of the applicant to carry out the proposed works, the scope of the proposed works or the estimated cost of the proposed

works and all or any of the respondents are entitled to challenge these matters in due course when the relevant service charge accounts are served on them.

Judge John Hewitt  
16 May 2018

#### **ANNEX - 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.