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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AW/LDC/2012/0144

**Premises:** 46 Harrington Gardens, London SW7 4LT

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**Applicant(s):** Swirecourt Ltd

**Representative:** Chelsea Property Management

**Respondent(s):**

- (1) M Moore (Flat 1)
- (2) Ivory Ltd (Flat 2)
- (3) Ms Matei (Flat 3)
- (4) Ms Whitfield (Flat 4)
- (5) Mr Hollingsworth (Flat 5)
- (6) Messrs Yim and Hanson (Flat 6)

**Representative:** Mr Yim

**Date of hearing:** N/A

**Appearance for  
Applicant(s):** N/A

**Appearance for  
Respondent(s):** N/A

**Leasehold Valuation  
Tribunal:** Ms L Smith (Lawyer chair)  
Mr D Jagger, MRICS

**Date of decision:** 4 February 2013

### **Decisions of the Tribunal**

In accordance with the provisions of s20ZA of The Landlord and Tenant Act 1985 ("LTA 1985"), the Tribunal refuses the dispensation sought from the formal consultation requirements of s20 LTA 1985 in relation to the works to the Property specified in the application notice.

### **The application**

1. The Applicant seeks a dispensation from the consultation requirements of s20 LTA 1985 in relation to works to a property at 46 Harrington Gardens, London SW7 4LT ("the Property"). The Applicant is the Right to Manage Company for the Property. The Respondents are the Lessees of the Property.
2. The Applicant indicated in the application that it was content for the case to be dealt with on the papers. Directions were given on 4 December 2012 inviting the Respondents to indicate by 14 December whether they consented or opposed the application and whether they required an oral hearing.
3. The Lessees of Flats 1, 5 and 6 responded by notices dated 12<sup>th</sup> and 13<sup>th</sup> December 2012 indicating that they objected to the dispensation sought. The Lessees of Flats 1 and 6 indicated that they were content for the application to be decided by the Tribunal on the papers and did not require a hearing. The Lessee of Flat 5 (Mr Hollingsworth) indicated both that he did not require a hearing and that he was not content for the Tribunal to deal with the matter on the papers. Since those answers are mutually inconsistent but Mr Hollingsworth has taken no active part in responding to the application (which response has been coordinated by Mr Yim of Flat 6), the Tribunal has assumed that he meant to indicate that he did not require a hearing and has proceeded accordingly to determine the application on the papers.
4. The Lessees of Flats 2, 3 and 4 responded by notices dated 6<sup>th</sup> December 2012 indicating that they consented to the dispensation sought. They all indicated that they were content for the application to be decided by the Tribunal on the papers and did not require a hearing.

### **The background**

5. The Property is a Victorian property converted into 6 flats.
6. The works in relation to which dispensation is sought comprise repairs and redecorations to the exterior and interior of the Property including the installation of a communal entry phone system and locks ("the Qualifying Works").
7. The Qualifying Works are repairs and redecorations to the front elevation and communal interior parts of the Property. The front elevation works include all levels from the basement to the fourth floor inclusive, repairing roof soffit and tiling the entrance steps. Repair and redecoration of the communal interior parts of the Property were included in a consultation exercise in 2011 and works were commenced but not completed due to a dispute with the contractor. The Qualifying Works include however additional items in the form of a communal entry phone system and new locks.

8. The Applicant sent to the Respondents the first notice under s20 (dated 21 December 2012) notifying its intention to carry out the Qualifying Works ("the s20 Notice"). The relevant period under the s20 Notice expired on 25 January 2013. This application was apparently dated on 7 September 2012 but not received by the Tribunal until 30 November 2012.

### The issues

9. The Applicant seeks a dispensation from the consultation requirements of s20 in relation to the Qualifying Works for a number of reasons. It is asserted that there is a health and safety danger arising from cracking in the roof soffit. It is also asserted that some of the Qualifying Works are now urgent on the basis of serious damp penetration which risks deterioration of the fabric of the Property. It is asserted that the communal entry phone system and lock replacement works are required urgently as the current locks are faulty and pose a security risk.
10. Section 20ZA of the Landlord and Tenant Act 1985 provides that:-  
*"(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"*
11. Three of the six Lessees have objected to the application. Their objections have been put forward in writing by Mr Yim (Flat 6). In short, whilst Mr Yim at least does not appear to dispute the need for the Qualifying Works, he asserts that they are not urgent and do not require a dispensation. He asserts that the crack in the roof soffit has been there for years, is exaggerated and does not constitute a danger to the public. Whilst he accepts that there has been one burglary in the Property recently, he disputes that this was due to a faulty lock and says that both the locks and the communal entry phone system are functioning subject to occasional minor problems. He disputes that the repairs comprised in the Qualifying Works are urgent and some he says are purely decorative (eg the tiling of the steps).
12. In relation to the repairs and redecoration to the front elevation, the Applicant's main argument appears to be less about an urgent need for these as an economic argument that once the scaffolding is up to carry out the repairs to the roof soffit, the redecoration may as well be carried out (although the Applicant does assert that the damp is damaging the structure of the Property but without any evidence to support this). The Applicant appears to accept that a rough repair to the entrance step tiling would suffice before the Qualifying Works take place. The Applicant asserts that were the roof soffit to fall, it could endanger members of the public. That is disputed by Mr Yim but in any event there is no evidence to support the assertion that it is likely to fall and whilst there is clearly a crack shown by the photographs, it appears that

this has been there for some time even on the Applicant's case (see statement referring to need for repairs being recognised in 2011). It is asserted by the Applicant that Flats 2, 3,4 and 5 have intermittently or non working intercoms but the Lessee of Flat 5 has actually objected to dispensation and there is no evidence to support what is asserted. In any event, presumably a minor repair could be carried out in the meanwhile to ensure that the intercoms were working. The need for new locks is supported it is said following a crime prevention officer's visit by a report from Banham but that does not appear to have been produced and that the locks are faulty is disputed by Mr Yim. Even the applicant only refers to the locks as "often" being able to be opened without a key. Again, there is no evidence to support this disputed assertion.

13. As noted at paragraph 8 above, the s20 consultation process has been commenced for the Qualifying Works and could be completed within the next few months. The Applicant's statement refers to the additional items which did not form part of the consultation process in 2011 becoming apparent in that year (some 2 years ago) and the Tribunal sees no reason therefore why a few more months cannot be spent in properly concluding the consultation process under section 20. This will afford the opportunity to the 50% of Lessees who object to the dispensation to be properly consulted on the need for the Qualifying Works and the reasonableness of the not insignificant costs thereof.
14. For the avoidance of doubt, the only issue for the Tribunal to determine on this occasion is whether it is reasonable to grant the dispensation sought in relation to consultation. This determination does not prevent any later application in relation to the Respondents' liability to pay for the Qualifying Works under the Lease nor in relation to the reasonableness of the costs of the Qualifying Works.

Chairman:



Ms L Smith

Date:

4 February 2013