



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

**Case Reference:** LON/00AN/LDC/2022/0123 P

**HMCTS code:** P: PAPERREMOTE

**Property:** 190 Fulham Palace Road London W6  
9PA

**Applicant:** Aberdeen City Council Pension Fund

**Representative :** Workman LLP (Carolyn Tull)

**Respondents:** The leaseholders of the flats listed in the  
schedule to the application

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

**Tribunal  
members:** Judge Pittaway  
Mrs S Redmond MRICS

**Date of decision:** 24 October 2022

## DECISION

### Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

The documents to which the Tribunal was referred in a bundle of 279 pages which included the application dated 21 June 2022, the Directions dated 8 September 2022, a statement by the Applicant, details of the original works and the asbestos removal works with attendant professional reports and surveys, details of expenditure incurred to date and copies of the two flat leases.

The Tribunal has had regard to the documents before it in reaching its decision set out below.

## DECISION

**The Tribunal grants the application for dispensation (retrospective in relation to certain of the works), from statutory consultation in respect of the subject works ('the works'), namely**

- **Scaffold alterations or the internal asbestos removal and associated roof works for formation of access into roof space and reinstatement on completion.**
- **Asbestos stage 1 works to remove internal AIB and decontaminate roof void area.**
- **Asbestos stage 2 works to remove AIB soffit boards, plus contractor overheads, site management**
- **Additional soffit replacement costs and additional decoration of new surfaces**
- **Strengthening works to the gable end**
- **Strengthening works to second floor lintel**
- **Corbel bracket removal and reinstatement with work to adjacent brickwork**
- **Replacement of rotten fascia boarding**
- **Repair of cracked chimney stacks**
- **The installation of a false roof during the works to prevent water ingress**

**This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or the cost of the subject works.**

### **The Application**

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the ‘**Act**’) for dispensation from consultation in respect of the works to the Property.
2. The applicant seeks dispensation from the consultation requirements to minimize the cost of the work, which has already increased substantially from that originally contemplated when dispensation was obtained in February 2022 for repair works to the roof and exterior of the property. The increased cost is as a result of the discovery of asbestos at the property and the need for further structural work, not previously identified.
3. For health and safety reasons it is necessary to retain scaffolding pending completion of the works, and the applicant is seeking to avoid scaffolding hire costs for a possible further 3-4 months pending consultation. It is also seeking to limit the length of time the works take to avoid increasing costs of materials and labour.
4. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to carry out qualifying works which would result in the contribution of any tenant being more than £250. The applicant’s statement states that the overall project cost summary, including professional fees and contingencies at 30 September 2022 was £133,422.59 plus VAT.
5. By directions dated 8 September 2022 (the ‘**directions**’) the Tribunal directed that the Applicant by 15 September 2022 send each leaseholder and any residential sublessees the application and the directions and display a copy in a prominent place in the common parts of the property and confirm to the Tribunal that this had been done by 18 September. The Applicant confirmed on 19 September 2022 that the application had been sent to the tenants on 30 June and a copy of the directions sent to the tenants and placed in the common parts on 15 September 2022.
6. The directions provided that if any leaseholder/sublessee objected to the application he/she should do so, to the Applicant and the Tribunal, by 29 September 2022. The Tribunal received no objections, and the Applicant confirmed to the Tribunal that it had received none.

7. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. No such request has been made.

### **The Applicant's case**

8. The property is a three storey building with first and second floor flats above a ground floor retail unit.
9. The applicant's statement describes that as part of the originally anticipated works (for which dispensation from consultation had been given in February 2022) an asbestos refurbishment survey was undertaken in February 2022 and AIB soffit boards discovered. During a visit by the structural engineer in April to investigate the supporting structure of loose stone corbels and the forward rotation of the front projecting gable roof structure discarded offcuts of AIB boarding were discovered in the roof voids. On a further inspection in April further cracking was noted to the large stone corbel bracket on the front elevation. As this posed a Health and Safety risk a scaffolding extension was erected immediately to protect the public walking underneath.
10. A revised schedule of works was collated. The project cost summary, including professional fees and contingencies, was estimated the cost in June at £119,000 plus VAT. By 30 September 2022 this had increased to £133,422.59 plus VAT, including contingency sums, and the expenditure of £21,722 plus VAT incurred to that date for ongoing scaffolding hire, structural engineer's advice, asbestos consultancy services and asbestos removal costs.
11. The application stated that the intention was to instruct the asbestos removal works on 27 June to maintain momentum on site and keep scaffolding costs down, the intention being that work would start early July following the two week prior notification to the HSE which is required to be given. The applicant's statement states that this work had been completed by 26 August 2022.
12. The application stated that the intention was to program the soffit replacement immediately after the asbestos removal works, with the original roof works to be undertaken immediately thereafter, with the additional structural works, to enable the scaffolding to be removed except for that on the front elevation under the cracked corbel bracket.
13. The application states that all the leaseholders were kept informed of the developments between February and June. The documents before the Tribunal include two 'Notices of Intention' dated 30 June 2022 relating to the works then known to be required, when the tenants were advised that the application was being

made to the Tribunal for dispensation from section 20 consultation and that there would be an accelerated and limited consultation process. The tenants were given 14 days to make observations, and 14 days to suggest anyone from whom the Applicant should obtain an estimate in respect of the removal and reinstatement of the large corbel bracket to the front. The tenants were not invited to propose a contractor for the asbestos related works as Leonard Oakley Contractors had been awarded the original contract after a competitive tender process, and the works follow on and would be combined within that project.

14. Notice of Estimates and Award of Contract dated 3 August 2022 in respect of the Asbestos Removal Works was issued to the leaseholders with details of the additional cost.
15. The applicant in its statement refers to the inspection undertaken by Leonard Oakley Contractors on 26 August identifying certain further health and safety issues in relation to the corbel brackets, rotten fascia boards and cracked chimney stacks, with work required to these and the Tribunal has included these in its decision.
16. Internal opening-up works undertaken on 11 October 2022 around the second floor bay window have revealed substantial destabilisation of the roof. The required work to remedy this will result in a further project cost summary being required to be issued.

### **Responses from the Respondents**

17. The Tribunal received no objections or representations from any Respondent, and the Applicant stated that it that it had received none.

### **Determination and Reasons**

18. Section 20ZA(1) of the Act provides:

*“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.”*

19. The purpose of section 20ZA is to permit dispensation with the consultation requirements of section 20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with.
20. The Tribunal determines that the Respondents are not prejudiced by the works and it is reasonable to dispense with the consultation requirements.

21. In reaching its decision the Tribunal has considered the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, and has had regard to the application and the documents provided, in particular
- the evidence of the consultation which the Applicant has undertaken with the Respondents,
  - that no objection has been received from any Respondent, and
  - the stated need for the works.
22. Whether or not the Respondents are liable for the cost of the works by reason of the terms of their leases, any statutory provision other than section 20ZA, and whether the works are carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay and the reasonableness and /or cost of the works.
23. The Applicant is reminded that, as stated in the Directions, it is the responsibility of the Applicant to serve a copy of this decision on all Respondents.
24. The applicant will need to consider whether a further dispensation application needs to be made in respect of the work that may be required to be carried out revealed by the internal opening-up works undertaken on 11 October 2022.

Name: Judge Pittaway Date: 24 October 2022

### **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.