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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/LDC/2017/0008**
Properties	:	**126, 128 & 146 Rochester Way, Basildon, SS14 3QL**
Applicant	:	**Basildon Borough Council**
Respondents	:	**Edwin & Laura Tyson (126)** **David Verney (128)** **Ricky Hill (146)**
Date of Application	:	**12th April 2017**
Type of Application	:	**for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The Tribunal grants dispensation to the Applicant in respect of emergency works undertaken to the roof of the building in which the properties are situated to repair storm damage following a storm on the 22nd/23rd February 2017 **SUBJECT TO** the condition that no monies shall be payable by the Respondents save for a proportionate part of any reasonable excess which the insurance policy provides for. If the Applicant has failed to insure this risk, then nothing is payable by the Respondents.

Reasons

Introduction

2. The Applicant owns the freehold of the building in which the properties are situated. They are 3 right to buy long leasehold properties in a building where the remaining 10 flats are presumably let on secure tenancies. On the 23rd February 2017, the Applicants became aware that the roof of the building had been blown back in a storm and the fascia/soffits had been ripped away and bricks exposed. There was debris spread around the block.

3. Some emergency action was taken and repair work began on the 1st March 2017. However one of the Respondents complains that nothing was done to at least put a tarpaulin across the damaged roof to reduce internal damage. The estimated cost of the repair work is £6,444.29 i.e. £495.71 for each of these 3 long leasehold properties.

4. The application was received on the 21st April 2017 and on the same day a Directions Order was made requiring the Applicant to file and serve a statement setting out a history of the matter.

5. The order said that the Tribunal would be content, as suggested by the Applicant, for the matter to be determined on a consideration of the papers and any written representations filed, and would do so on or after 31st May 2017. It also said that if any party wanted an oral hearing, one would be arranged. No request for an oral hearing has been received.

6. Mr. Hill from 146 Rochester Way has responded to this application objecting to having to pay for the work to the roof because he says, in effect, that as it was storm damage, the cost should be covered by insurance. He points out that this is the second time in 3 years that the roof has blown off and flooded his flat. He used 2 workmen to put a tarpaulin over the roof to try to stop further damage.

7. The Applicant has filed a further statement from Tina Byrne saying:-

> *"no investigation has been carried out for an insurance claim by Basildon Borough Council. If repairs are completed in the common areas of a block of flats, the costs will be proportioned across the number of properties. If the damage was caused by an insured peril such as fire, storm or malicious damage the Council will claim on its own general property policy for the relevant proportion that relates to tenanted properties. Under the terms of a leaseholder's lease it is their responsibility to pay their individual proportion which is recharged to them accordingly, the leaseholder can then make a claim through their leasehold buildings insurance. The Council are unable to claim for the leaseholder's portion as this would not meet the terms of the lease."*

The Law

8. Section 20 of the 1985 Act limits the amount which lessees under residential long leases can be charged for major works to £250 per flat unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, an invitation to lessees to nominate potential contractors, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. There then has to be a tender process with

estimates being obtained including at least one from a contractor unconnected with the landlord. These requirements last well over 2 months.

9. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable. There has been much litigation over the years about the matters to be considered by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

10. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by a lessee or, perhaps put another way, what would they have done in the circumstances? The important part of this decision is that Tribunals can and should impose conditions on any granting of dispensation to ensure that leaseholders are not prejudiced.

The Leases

11. The Tribunal has seen all 3 leases and, so far as it is relevant to this application, they are in the same terms. There is an obligation on the Applicant to keep the structure and exterior of the premises in repair subject to the leaseholder paying a contribution to costs.

12. However it is also provided that "*The Lessor* (i.e. the Applicant Council) *will insure and keep insured the flats ... against loss or damage by fire and such other risks as the Lessor may from time to time consider desirable in an insurance office of repute to the full rebuilding cost ... and in the event of damage by fire or other cause lay out forthwith all moneys received from such insurance as soon as practicable in rebuilding or reinstating the flats and making good such damage*".

13. This provision is in the Schedule to the leases where it is said that the Lessor is to insure subject to the leaseholders contributing towards the premium. Thus, it is the leaseholders who are paying for their share of the insurance cover, not the Applicant. The Applicant Council clearly appears to have misunderstood the terms of the leases.

Discussion

14. It is of concern that the Applicant is saying that the cost of repairs has to be paid by the leaseholders and then claimed from their buildings insurance. None of the leaseholders are likely to have buildings insurance as such. They will have contents insurance but that is obviously not the same thing.

15. It is clear that the Applicant considers that storm damage is a usual risk to be covered because the statement of Tina Byrne specifically mentions this when mentioning insurance to cover fire. She also confirms that the Council have insurance to cover storm damage as she states that a claim will be made against the council's 'general property policy'.

16. Accordingly the position is that there was an emergency and the Applicant took urgent measures to reinstate the roof. Thus, the

Tribunal agrees that dispensation should be granted because there was insufficient time to go through the full consultation process.

17. However, it is not reasonable to expect the leaseholders to pay for this save for their share of any reasonable excess.

Conclusions

18. Accordingly, and following the **Daejan** case referred to above, the Tribunal imposes a condition on the granting of consent i.e. that the leaseholders should not have to pay for the work save for the insurance excess provided, of course, that this is reasonable. The Tribunal has in mind the possibility of an unusually high excess being impose because of storm damage 3 years ago – if indeed that is what happened – as mentioned by Mr. Hill. Having to repair storm damage within 3 years of previous such damage, clearly provides evidence, on the face of it, that the previous repair was not carried out properly.

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Bruce Edgington
Regional Judge
31st May 2017

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.