



10351
First-tier Tribunal
Property Chamber
(Residential Property)

Case reference : CAM/00KF/LDC/2014/0024

Property : 22 Seaforth Road,
Westcliff-on-Sea,
Essex SS0 7SN

Applicant : David Lombard

Respondents : Michael & Danielle Hills (GFF)
Ian Maynard (2ndFF)

Date of Application : 10th November 2014

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)
Evelyn Flint DMS FRICS IRRV

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to investigate and treat dry rot at the property.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’ at the property, namely the investigation and treating of dry rot.
3. The property is described in the application as being a terraced house built in the 1890’s which has been converted into 3 flats.
4. The evidence from Mr. P. Williams CSRT from Essex & Anglia Preservation Ltd. filed on behalf of the Applicant has been noted by the Tribunal. His report is dated 17th November 2014 and refers to a survey of the 1st floor flat on the 6th November when the weather was dry and cold. It reports that an inspection of the exposed floor joists in the bay together with some visible brickwork and timber stud wall dividing the lounge and kitchen revealed evidence of dry rot (*Serpula Lacrymans*) and spores.

5. The report recommends that the full extent of the 'attack' needs to be exposed including access to the ground floor flat *"and to support the bressemer as a matter of urgency on accro's due to its decaying state. During these works it would be likely both the residents will need to temporarily move out of the dwelling"*.
6. The report says that it is impossible to give an estimate of the cost of the work until there has been full exposure and that the 'water source' which has caused the problem should be identified and dealt with.
7. On the 9th November, the Applicant commenced a section 20 consultation advising of the problem but saying that there was not much detail that could be given until the matter had been investigated. The urgency of the problem was subsequently identified in the above mentioned report.
8. The Tribunal Chair issued a directions order on the 11th November 2014 timetabling this case to its conclusion. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 21st November. None were received.

The Inspection

9. As it was clear that only a small part of the property was exposed for examination and as there was an 'expert's' report to interpret what could be seen from an inspection, the Tribunal determined that a pre-hearing inspection was not necessary.

The Law

10. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works 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 Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
11. 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 to do so.

The Lease terms

12. A copy of the lease to the ground floor of the property has been provided which is dated 24th May 1982 and is for a term of 199 years

from the 25th March 1982 with a ground rent of £30 per annum. The landlord has to maintain, repair and replace as necessary the structure and exterior of the building.

The Hearing

13. The hearing was attended by the Applicant freehold owner and Michael Hills who, with his wife Danielle, is the ground floor leaseholder. Mr. Hills made it clear that his only purpose in attending the hearing was to prevent Mr. Lombard's company, Decorum, carrying out the work.
14. Mr. Lombard said that he was meeting the insurer next Tuesday and would find out what they would do and pay for. Whatever happened, he agreed and gave a commitment that he would have the remedial work undertaken by a specialist timber treatment company and have the work supervised by an RICS member. As far as any restoration work is concerned, he also undertook to have any plasterwork undertaken by an ornate fibre plaster specialist.

Conclusions

15. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
16. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the leaseholders or, perhaps put another way, what would they have done in the circumstances?
17. In view of the evidence submitted, the Tribunal agrees, on balance, that the dry rot is likely to have spread to other parts of the building and that urgent investigation is needed. Whilst the affected areas are exposed, it would be reasonable and sensible for the treatment to be undertaken immediately to cause as little disruption as possible to the occupants. The Tribunal therefore finds that there has been no provable prejudice to the lessees from the lack of consultation. Dispensation is therefore granted.
18. It is right to point out that this decision does not determine that the cost of the work is necessarily reasonable because the Tribunal does not have any quotations from builders or treatment contractors.

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Bruce Edgington
Regional Judge
27th November 2014