



11418

**First-tier Tribunal
Property Chamber
(Residential Property)**

- Case reference** : CAM/00MF/LDC/2015/0001
- Property** : Thamesfield Village,
Wargrave Road,
Henley-on-Thames,
RG9 2LX
- Applicant** : RV Services
- Respondent** : The leaseholders and occupiers of the
nursing home who contribute to the service
charges at Thamesfield Village as defined
in section 18 of the Landlord and
Tenant Act 1985 (“the Act”)
- Date of Application** : 4th January 2016
- Type of Application** : for permission to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA of the Act)
- Tribunal** : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

Crown Copyright ©

1. The Applicant is granted dispensation from consultation requirements in respect of works to replace the hot water heater at the property in November 2015.

Reasons

Introduction

2. This is an application for dispensation from the consultation requirements in respect of ‘qualifying works’ to the hot water system at the property. The members of the Tribunal were unable to see copies of the leases relating to the property but it is assumed, for the purpose of this decision, that the Applicant is responsible for keeping the hot water system of the building in good repair and condition.
3. A procedural chair issued a directions order on the 4th January 2016 timetabling this case to its conclusion. The directions order said that if any leaseholder or qualifying occupier wished to make representations, then these

should be filed and served by the 28th January 2016. None were received by the Tribunal.

4. The order also said that the Tribunal was content to deal with this matter on a consideration of written evidence and the written representations of the parties on or after the 10th February 2016. However, it offered an oral hearing should any party request one. No such request was received.

The Law

5. Section 20 of the 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.
6. The landlord's proposals, which should include the observations of tenants and the amount of the estimated expenditure, then have 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.
7. 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 so to do.

The Inspection

8. The Tribunal did not consider that it was necessary to inspect the hot water tank in question as it had already been replaced. Having said that, all parties were informed that if they wanted an inspection, then a request would be considered by the Tribunal. None was received.

Conclusions

9. All the Tribunal has to determine is whether dispensation should be granted from the consultation requirements under Section 20ZA of the Act. There has been much litigation over the years about the matters to be determined by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances?
10. It is clear that Thamesfield Village is a retirement community with one hot water tank serving the estate. On Friday 6th November 2015, the hot water cylinder had split and the basement of the building started to fill with water. A plumber isolated the tank which meant that the residents were without hot water in winter.

11. A written quotation was obtained from Qualitas Heating and Maintenance Ltd. on the 11th November 2015 and they could start work on the 17th November. Another quote was obtained which, although for a lesser sum, involved a wait of some 2/3 weeks. A decision was made to accept the 1st quotation and the work was done at a cost of £12,115.58.
12. In view of the health and safety issues for elderly people without hot water for washing, heating etc. during the winter, the Tribunal gives dispensation from the consultation requirements. However, it should be made clear that this decision is not a determination as to the payability of the service charges or the reasonableness of the cost or the works. Nevertheless, if there is to be a challenge to the reasonableness of the cost or works, any subsequent Tribunal will need to have convincing evidence that works to achieve the same result could have been undertaken within the timescale provided at a significantly reduced cost.

Bruce Edgington

.....
Bruce Edgington
Regional Judge
15th February 2016

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.